15-12540

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 753.

THE COLUMBUS SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED JUNE 9, 1892.

(15,051.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Columbus Southern Railway Company, plaintiff in error, and William A. Wright, comptroller general of the State of Georgia, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution

2 or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
LUCIUS Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Filed in office May 23rd, 1892. Z. D. Harrison, cl'k S. C., Ga.

3 UNITED STATES OF AMERICA, *ss*:

To William A. Wright, comptroller general of the State of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein The Columbus Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lucius Q. C. Lamar, associate justice of the Supreme Court of the United States, this nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

LUCIUS Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States.

4 Due and legal service of the within citation and receipt of copy is hereby acknowledged; all other or further service or notice is hereby waived.

Atlanta, Ga., this 23d day of May, 1892.

WM. A. WRIGHT, *Comp. Gen'l.*

Filed in office May 23rd, 1892.

Z. D. HARRISON,
Clk S. C., Ga.

5 To the Honorable L. Q. C. Lamar, one of the justices of the Supreme Court of the United States:

The petition of the Columbus Southern Railway Company, a corporation created, organized, and existing under the laws of the State of Georgia, respectfully shows—

That on the 26th day of December, 1890, it exhibited to the superior court of Fulton county, Georgia, its equitable petition against William A. Wright, as comptroller general of the State of Georgia, in which petition it was alleged that said defendant, under color of an act of the legislature of Georgia entitled "An act to provide a system of taxation on railroad property in each of the counties of this State through which said railroads run, and to provide a mode of assessing and collecting the same, and for other purposes," approved October 16th, 1889, was about to enforce the collection of a tax upon the property of petitioner for the benefit of the several counties through which the line of petitioner's railway ran; that in said petition it was distinctly alleged that said act was unconstitutional and void because repugnant to that clause of the first section of the fourteenth amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws, and it was prayed that said act be decreed to be unconstitutional and void upon the grounds stated, and

that said defendant and his successors in office be restrained and enjoined from collecting such tax so imposed. To this petition the defendant demurred generally, and, after argument of counsel had thereon, the court sustained such demurrer on the ground, among others, that said act was not repugnant to said first section of said fourteenth amendment, refused the injunction, and dismissed
6 the petition, whereupon petitioner filed its exceptions to said judgment and decree, obtained a writ of error, and said cause was thereupon transferred for review to the supreme court of the State of Georgia, which court, upon consideration thereof and after argument of counsel, rendered its final judgment on the — day of April, 1892, affirming the judgment of the court below.

Petitioner further shows that said judgment of the supreme court of Georgia was a final judgment of the highest court of the State in which a decision in said suit could be had; that in said suit there was drawn in question the validity of a statute of the State of Georgia on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity. Petitioner shows that such Federal question was at the proper time and in the proper manner presented in the pleadings; that such Federal question was actually decided by both superior and supreme courts in favor of the validity of the statute of the State, and that a decision of the question was necessary to the judgment rendered.

Wherefore petitioner presents herewith an exemplified transcript of the record of said supreme court of Georgia in said cause and prays that a writ of error to said supreme court be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such case made and provided said bond and writ of error may operate as a supersedeas; that the errors complained of be reviewed in the Supreme Court of the United States and the judgment of said supreme court of Georgia be reversed.

WILLIAM A. WIMBISH,
Of Counsel for Petitioner.

Petition granted. Let writ issue. May 19th, 1892.
L. Q. C. LAMAR.

Filed in office May 23rd, 1892.
Z. D. HARRISON,
Clk S. C., Ga.

7 UNITED STATES OF AMERICA,)
State of Georgia, County of Fulton.)

Whereas lately at a term of the supreme court of the State of Georgia, in a suit depending in said court between The Columbus Southern Railway Company against William A. Wright, as comptroller general of the State of Georgia, a final judgment was rendered against said The Columbus Southern Railway Company; and whereas said The Columbus Southern Railway Company is

seeking the allowance of a writ of error in the Supreme Court of the United States to reverse the judgment of the said supreme court of the State of Georgia in the aforesaid suit;

And whereas it is desired that upon the allowance and issuance of such writ of error the bond required by law be executed and filed, so that said writ of error may operate as a supersedeas to said judgment:

Now, therefore, know all men by these presents that we, W. B. Lowe, George W. Parrott, and James W. English and each of us, all of said State and county, have constituted and appointed, and by these presents do constitute and appoint, William A. Wimbish, of the county of Muscogee, State of Georgia, our true and lawful attorney-in-fact, and hereby fully authorize and empower him for us and each of us and in our and each of our names to sign, seal, execute, and deliver such bond in such an amount as may be required and assessed in the aforesaid suit, payable to said William A. Wright, as comptroller general of the State of Georgia, his certain attorney, executors, administrators, assigns, or successors in office, conditioned that if said The Columbus Southern Railway Company shall prosecute the said writ of error to effect and answer all damages and costs if it fail to make its plea good, then such bond to be void, else to remain in full force and virtue; all of
8 which the said William A. Wimbish, as our attorney-in-fact, is hereby authorized and empowered to do as fully and completely for us and each of us and in our and each of our names as we or each and every of us might or could do were we personally present, we and each of us hereby ratifying and confirming all and singular the actings and doings of our said attorney-in-fact in the premises.

In witness whereof the said W. B. Lowe, George W. Parrott, and James W. English have hereunto severally set their hands and affixed their seals this 16th day of May, in the year of our Lord one thousand eight hundred and ninety-two.

W. B. LOWE. [L. S.]
GEO. W. PARROTT. [L. S.]
J. W. ENGLISH. [L. S.]

Signed, sealed, and delivered this 16th day of May in presence of—

[SEAL.] F. G. LAKE,
N. P., F. C., Ga.

Filed in office May 23rd, 1892.

Z. D. HARRISON,
Clk S. C., Ga.

9 Supreme Court of the United States.

THE COLUMBUS SOUTHERN RAILWAY COMPANY)
v.
WM. A. WRIGHT, as Comptroller General of the State of Georgia.)

In error to the supreme court of Georgia.

Know all men by these presents that we, The Columbus Southern Railway Company, a corporation created, organized, and existing under the laws of the State of Georgia, and W. B. Lowe, George W. Parrott, and James W. English, are held and firmly bound unto William A. Wright, as comptroller general of the State of Georgia, and his successors in office, in the sum of ten thousand (10,000) dollars to be paid to the said William A. Wright, as comptroller general, his successors, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, and administrators, firmly by these presents.

Sealed with our seals. Dated this 16th day of May, 1892.

Whereas the above-named The Columbus Southern Railway Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named The Columbus Southern Railway Company shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE COLUMBUS SOUTHERN
RAILWAY COMPANY. [L. S.]
By WM. A. WIMBISH, *Its Attorney-at-law.*
W. B. LOWE, [L. S.]
10 GEO. W. PARROTT, [L. S.]
JAMES W. ENGLISH, [L. S.]
By WM. A. WIMBISH, *Their Attorney-in-fact.*

Sealed and delivered in presence of—
L. Q. C. LAMAR.

Approved this 19th May, 1892.
L. Q. C. LAMAR.

UNITED STATES OF AMERICA,)
State of Georgia, County of Fulton.)

Personally appeared before the undersigned W. B. Lowe, who, being duly sworn, deposes and says that he has authorized his name to be signed as security — the supersedeas bond in the case of The Columbus Southern Railway Company *v.* William A. Wright, as comptroller general of the State of Georgia, in which case the said The Columbus Southern Railway Company is seeking an allowance of a writ of error in the Supreme Court of the United States;

that he is worth the sum of more than twenty-five thousand dollars over and above all exemptions and liabilities.

W. B. LOWE.

Sworn to and subscribed before me this 16th day of May, 1892.

[SEAL.] F. G. LAKE,
N. P., F. C., Ga.

UNITED STATES OF AMERICA,
State of Georgia, County of Fulton.

Personally appeared before the undersigned George W.
11 Parrott, who, being duly sworn, deposes and says that he has authorized his name to be signed as security on the supersedeas bond in the case of The Columbus Southern Railway Company *v.* William A. Wright, as comptroller general of the State of Georgia, in which case the said The Columbus Southern Railway Company is seeking an allowance of a writ of error in the Supreme Court of the United States; that he is worth the sum of more than twenty-five thousand dollars over and above all exemptions and liabilities.

GEO. W. PARROTT.

Sworn to and subscribed before me this the 16th day of May, 1892.

[SEAL.] F. G. LAKE,
N. P., F. C., Ga.

Filed in office May 23rd, 1892.

Z. D. HARRISON,
Clk S. C., Ga.

12 Supreme Court of the United States, October Term, 1892.

THE COLUMBUS SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
v.
WILLIAM A. WRIGHT, as Comptroller General of the State of Georgia, Defendant in Error.

And now, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes said The Columbus Southern Railway Company, the plaintiff in error in the above-stated cause, by its counsel, etc., and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

That the supreme court of the State of Georgia erred in adjudging and deciding that the act of the legislature of Georgia entitled "An act to provide a system of taxation of railroad property in each of the counties of this State through which said railroads run, and to provide a mode of assessing and collecting the same, and for other purposes," approved October 16th, 1889, was not repugnant to that clause of the first section of the fourteenth amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Plaintiff in error says that in the aforesaid suit there was drawn in question the validity of said statute of the State of Georgia, on the ground of its being repugnant to said first section of the fourteenth amendment to the Constitution of the United States, and that the decision of said supreme court of the State of Georgia was in favor of its validity; to which judgment and decision the plaintiff in error excepts and assigns the same as error.

13 Wherefore, the said The Columbus Southern Railway Company prays that the judgment and decision aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it hath lost by occasion of said judgment and decision.

N. J. HAMMOND,
WILLIAM A. WIMBISH,
Solicitors and of Counsel for Plaintiff in Error.

Filed in office May 28th, 1892.

Z. D. HARRISON,
Clk S. C., Ga.

14 STATE OF GEORGIA, }
Fulton County. }

Be it remembered that on the 30 day of May, 1891, there came on to be heard at chambers before the Honorable Marshall J. Clarke, judge of the superior court of the Atlanta circuit, then and there presiding, a certain cause then pending in the superior court of Fulton county, in which The Columbus Southern Railway Company was plaintiff and William A. Wright, as comptroller general of the State of Georgia, was defendant, the same being a petition for injunction and relief. The defendant submitted a general demurrer upon the ground that, admitting all the allegations in said petition and amendment contained, the plaintiff was not entitled to the relief prayed nor to any relief at law or in equity. After argument of counsel and submission of briefs the court took the matter under advisement and reserved his decision thereon until the 29th day of August, 1891, when the presiding judge filed his opinion and rendered judgment and order sustaining said demurrer, denying the injunction and relief prayed; to which judgment and ruling of the court so made the plaintiff then and there excepted and now here excepts and specifically assigns the same as error.

And now, within twenty days after the rendition of the judgment and ruling as aforesaid, the said plaintiff, The Columbus Southern Railway Company, tenders this its bill of exceptions and alleges that, no evidence having been submitted on said hearing, none is material to a clear understanding of the errors complained of, and plaintiff in error specifies the following parts of the record in said cause as material to a clear understanding of the errors complained of, to wit:

The original and amended petitions of the plaintiff.

The demurrer of the defendant.

15 The opinion of the court filed in said cause.

The order of the court sustaining the demurrer and refusing the relief prayed.

Wherefore the plaintiff in error prays that this its bill of exceptions may be signed and certified in terms of the statute in such case made and provided.

WM. A. WIMBISH,
WORRILL & LITTLE,
Of Counsel for Pl'ff in Error.

I do certify that the foregoing bill of exceptions is true and specifies all of the record material to a clear understanding of the errors complained of; and I do further certify that no evidence having been submitted on the hearing, none is material to a clear understanding of the errors complained of, and the clerk of the superior court of Fulton county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such and cause the same to be transmitted at the next October term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 9 day of September, 1891.

MARSHALL J. CLARKE,
J. S. C., A. C.

Due and legal service of the foregoing bill of exceptions and writ of error is hereby acknowledged. Copy and all other or further notice or service is hereby waived.

This 9th day of September, 1891.

WM. A. WRIGHT,
Comp. Gen'l.

16 CLERK'S OFFICE, SUPERIOR COURT OF FULTON COUNTY,
ATLANTA, GA., *Sept. 15th*, 1891.

I hereby certify that the foregoing bill of exceptions hereunto attached is the true original bill of exceptions in the case therein stated, to wit, The Columbus Southern Railway Company, plaintiff in error, *vs.* W. A. Wright, comptroller general, defendant in error, and that a copy thereof has been made and filed in this office.

Witness my signature and the seal of said court affixed (official seal) the day and year first above written.

G. H. TANNER,
Clerk Superior Court.

17 [Endorsed:] Supreme court of Ga. The Columbus Southern Railway Company, pl'ff in error, *vs.* Wm. A. Wright, comptroller general, &c., def't in error. Original. Filed in office Sept. 9, 1891. G. H. Tanner, C. S. C. W. A. Wimbish, Worrill & Little.

18 [Endorsed:] No. 55. Atlanta circuit, supreme court of Georgia. Oct'r term, 1891. The Columbus Southern Rail-

way Company, pl'ff in error, *vs.* W. A. Wright, comptroller general of Georgia, def't in error. Original bill of exceptions. Filed in office September 9th, 1891. G. H. Tanner, clerk. Filed in office this 15th day of Sept., 1891. Z. D. Harrison, clerk supreme court. Little, Wimbish & Little, att'ys pl'ff in error.

19 *Petition.*

STATE OF GEORGIA,
Fulton County.

To the superior court of said county:

The Columbus Southern R'y Co., a corporation duly created by the laws of Georgia, presents this its petition against Wm. W. Wright, as comptroller general of the State of Georgia, and thereupon petitioner complains and says:

1. That the petitioner in its corporate capacity maintains and operates a line of railway extending from the city of Columbus, in the county of Muscogee, through the counties of Chattahoochee, Stewart, Terrell, Webster, and Lee to the city of Albany, in the county of Dougherty, and is engaged as a common carrier in the transportation of freight and passengers over and along its said line of railway, and that petitioner's domicile and principal office, fixed by its charter, is in the city of Columbus, county of Muscogee, in which said county is situated all of its property, excepting its right of way, road-bed, superstructure, depots, and usual appurtenances along its said line of railway.

2. Petitioners show that the legislature of the State of Georgia, at the summer session in the year 1889, passed an act, approved October 16, 1889, by the terms of which all railroad companies in this State were required to make annual returns of its property to the comptroller general in a specified manner for the purpose of taxation for the benefit of the several counties through which said road runs, and that, based upon such returns, taxes should be assessed in the manner specified and apportioned to said several counties, and in the event of a failure to pay such tax so assessed within sixty days after the receipt of the notice from the comptroller
20 general, provided in the act, the comptroller general should issue a *fi. fa.* for the same, which *fi. fa.* should be issued, levied, and returned in the same manner as tax *fi. fas.* are issued by the State for State taxes due in the State by said companies, reference to which said act is hereby had.

3. Petitioner shows that it has made the returns of its property for the year 1890 at the time and in the manner provided in said act, and that under color of said act the said Wm. A. Wright, as comptroller general, has based upon such returns *and* the several tax rates obtaining in the respective counties assessed and levied taxes for the benefit of the several counties through which petitioner's road runs, and has notified petitioner under date of October 27, 1890, that such taxes so levied must be paid to the respective tax-collectors of the several counties named within sixty days from

the date of such notice to each county in the respective amount as follows, to wit: To Muscogee county, the sum of $209.45; to Chattahoochee county, the sum of $1,095.74; to Stewart county, the sum of $572.56; to Webster county, the sum of $208.60; to Terrell county, the sum of $141.46, the original of which said notice is hereto attached, marked Exhibit "A."

4. Petitioner further shows that unless restrained by this honorable court the said Wm. A. Wright, as such comptroller general, will, within sixty days from the date of the aforesaid notice—that is to say, on December 27th, 1890—issue *fi. fas.* for such taxes in the name of the State of Georgia against petitioner and proceed to have the same collected by levy upon and sale of its property.

5. Petitioner submits that it should — be required to pay said taxes or any part thereof for the reason that the aforesaid act, under color of which said taxes were assessed and levied, is illegal,
21 unconstitutional, and void in the following particulars, to wit:

First. The aforesaid acts of 1889, under color of which such taxes were assessed, is illegal and void, in that it offends paragraph 1, section 2 of article 7, of the constitution of the State of Georgia, which provides: "All taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general law." Petitioner says that the said taxes so levied under color of said act are not uniform upon the same class of subjects (1) because section 3 of the aforesaid act prescribes a method of assessment for taxation based upon such property value as to certain railway companies, while by section 4 is prescribed a different method of assessment, based upon the net income as to certain other companies. Certain railroads are assessed for taxation upon *its* personal property, wherever located, in the proportion as the value of the property located in each particular county bears to the whole property, real and personal, of said county, while other railroad companies are assessed for taxation upon their net income upon the basis and in the proportion as the number of miles of road in the several counties through which said railroad runs bears to the whole length of such railroad, thus establishing as to some railroad companies as a basis for taxation the value of property owned in each particular county through which said road runs, and, as to the other railroad companies, a basis for taxation the value of the property owned in each particular county through which said roads run; as to the other railroad companies, a basis of taxation founded upon the number of roads maintained by such company in such particu-
lar county, and that certain railroad companies are taxed at
22 the different rates of taxation levied by the several counties through which such roads run, while others are taxed at a rate fixed by their respective charters.

2. Because the aforesaid act prescribed a different mode of and basis of assessment for taxation upon the property of railroad companies from that prescribed by the general law of the State for taxation upon the property of other corporations and of individuals, in

this, to wit: Other corporations and individuals only such of their property assessed for taxation for the benefit of the counties of the State as lies within the territorial limit of such county, while with respect to railroad companies only *its* real property is assessed and taxed, *its* rolling stock and other personal property, wherever located, is by the aforesaid act distributed for taxing purposes and is assessed for taxation for the benefit of the several counties through which said railroads run, whether or not such personal property be within the territorial limits of such particular county, in proportion as the value of the property located in that particular county is to the value of the whole property, real and personal, of said county.

Second. Such tax so prescribed by said act of 1889 being not uniform in the particulars hereinabove stated, the said act is illegal and void, in that it offends that clause of the 14th amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction *to* the equal protection of the law, this petitioner averring that it is a person within the jurisdiction of the State of Georgia within the meaning of said clause; that the taxes so assessed against it being not uniform with those assessed against other railroad companies and other companies and individuals, the same is a denial as to it of the equal protection of the law.

3. Because the aforesaid act is violative of paragraph 1 of
23 section IX of article VI of the constitution of the State of Georgia, and therefore illegal and void, in this, to wit: It is provided in section VII — said act that should any railroad company dispute the liability to such county tax it may be done by an affidavit of illegality, which shall be returned for trial to the superior court court of Fulton county without regards to the place where such company may have its domicile or where the cause of dispute may arise, thus investing the superior court of Fulton county with a jurisdiction not conferred upon it nor authorized by the constitution of this State nor enjoyed by the superior courts of other counties of this State, thus offending that paragraph, section, and article of the constitution referred to, which declares that the jurisdiction of all courts, except city courts of the same grade or class, shall be uniform throughout the State.

Wherefore petitioner says that the aforesaid acts is unconstitutional, illegal, and void, and that the taxes assessed against petitioner under color thereof are illegal and their collection should be perpetually enjoined.

Wherefore petitioners pray'—

1. That the court will order and decree that an injunction shall issue perpetually restraining and enjoining the said defendant and his successors in office from issuing any *fi. fas.* against this petitioner because of the non-payment of the taxes so levied and assessed against it, as hereinabove set out, under color of said act of 1889, and that all proceedings taken for the purpose of collecting such tax be perpetually enjoined.

2. That the court will grant a temporary restraining order enjoin-

ing the said defendant from issuing such *fi. fas.* against this petitioner until the further order of the court.

3. That the court will decree that the said act of 1889, ap-
24 proved October 16, 1889, to be in violation of the constitution of the State of Georgia and of the Constitution of the United States, and therefore illegal and void.

That process may issue requiring the defendant to be and appear at the next superior court to be held in and for said county to answer petitioner's complaint and abide the further order of the court, discovery or answer under oath being hereby expressly waived.

LITTLE, WIMBISH & LITTLE,
Counsel for Petitioner.

STATE OF GEORGIA, }
Fulton County. }

Personally appeared before the undersigned Wm. D. Lowe, who, being duly sworn, deposes and says he is the president of The Columbus Southern Railway Company, the petitioner named in the foregoing petition, and that he has read the said petition and knows the contents thereof; that the facts therein stated are true of his own knowledge excepting the facts therein stated on information and belief. As to such he verily believes them to be true.

WM. D. LOWE.

Sworn to and subscribed before me this 26th day of December, 1890.

MARSHALL J. CLARKE,
Judge S. C., A. C.

25 EXHIBIT "A."

STATE OF GEORGIA, COMPTROLLER GENERAL'S OFFICE,
ATLANTA, *October 27th*, 1890.

T. J. Pearce, pres't of Columbus Southern R. R. Co.

DEAR SIR: Below find statement of taxes due each county for the year 1890 through which your road runs. These taxes are required by law to be paid to the tax-collectors of these counties within sixty days from the date of this notice:

Muscogee county—value, $837.83; tax, 2½ mills, $209.45.	$209 45
Chattahoochee Co.—value, $1,369.68; tax at 8 mills, $1,095.74	1,095 74
Stewart Co.—value, $1,145.12; tax at 5 mills, $472.76...	472 76
Webster county—value, $600.65; tax at 347 mills, $208.60	208 60
Terrell county—value, $280.69, at 534 mills, $141.46....	141 46
	$2,287 81

Service.

Served W. A. Wright, compt. gen'l, with a copy of the restraining order on the within December 26th, 1890.

L. P. THOMAS, *Sheriff.*

Filing.

Filed in office December 27, 1890.

G. H. TANNER, *Clerk.*

26 *Rule Nisi.*

Read and considered. Let the petition be filed, and let the defendants show cause before me, at 9 o'clock a. m., January 24, 1891, why the prayer of the petition for injunction should not be granted. In the meantime and till the hearing let the defendants be restrained from issuing said *fi. fas.*

This December 27, 1890.

MARSHALL J. CLARKE, *Judge.*

Process.

GEORGIA, }
Fulton County. }

THE COLUMBUS SOUTHERN R'W'Y CO. }
vs. } Complaint.
W. A. WRIGHT, Compt. Gen'l. }

To the sheriff or his deputy of said county, Greeting:

The defendant is hereby required personally or by attorney to be and appear at the superior court to be held in and for said county on the first Monday in March, 1891, then and there to answer the plaintiff's complaint, as in default thereof said court will proceed as to justice shall appertain.

Witness the Honorable Marshall J. Clarke, judge of said court, this 27th day of December, 1890.

G. H. TANNER, *Clerk.*

2nd Service.

Served W. A. Wright, compt. gen'l, personally with a copy of the within January 1st, 1891.

W. A. WILSON, *D. Sheriff.*

27 *Amendment.*

In Fulton Superior Court.

THE COLUMBUS SOUTHERN R'Y CO. }
vs.
WM. A. WRIGHT, Comptroller Gen'l. }

Petition for injunction, relief.

And now comes The Columbus Southern Railway Company, the petitioner named in the above-stated cause, and, leave of the court

being had and obtained, amends its original petition of file in said case as follows, to wit:

I. The act approved October 16, 1889, is violative of paragraph 1, section 2, article VII, of the constitution of Georgia, which requires that all taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

(1.) The State is the authority levying the tax under this act and the tax is not uniform because the rate of taxation differs for the benefit of each of the several counties through which the particular road runs and because the act provides a different rule for taxation and a different mode for return, assessment, and collection with respect to the property of railroads from that obtaining with respect to the property of other corporations and individuals in this State.

(2.) The act of 1889 is a special law and as such offends that clause of the constitution above recited which requires that all tax-shall be levied and collected under general laws.

II. The tax being levied and collected by the State for the benefit of the counties concerned transcends the constitutional authority of the legislature to impose a State tax and is, therefore, violative of section 1, article VII, of the constitution of the State of Georgia.

III. The act of 1889 embraces two subjects-matter, in that
28 it provides for a tax upon the property of certain railroad companies, which is one subject-matter, and also for a tax upon the net income of other certain railroad companies, which is another subject-matter, and is thus violative of paragraph 8, section 7, article III, of the constitution of the State of Georgia.

IV. Petitioner further amends its said original petition, and by showing that unless the equitable relief prayed be granted a *fi. fa.* will be issued by the comptroller general for the amount of the tax claimed to be due and payable, which *fi. fa.* will be a cloud upon the title of petitioner's real estate.

And petitioner further shows that if such relief be not granted a multiplicity of suits will ensue, in that under the terms of the statute an affidavit of illegality is required to be filed by it to the levy of the sheriff of each of the counties through which petitioner's road runs, thus creating a multiplicity of suits involving complex questions and conflicting rights.

Wherefore petitioner prays as it hath already prayed in and by its original petition as filed in this cause, and further prays that said act of 1889 may be decreed to be unconstitutional and void for the reasons and upon the grounds stated in this its amended petition.

LITTLE, WIMBISH & LITTLE,
Petitioner's Attorneys.

STATE OF GEORGIA,)
Fulton County.)

Personally appeared before the undersigned J. W. English, who, being duly sworn, deposes and says that he is vice-president of The

Columbus Southern Railway Company, the petitioner named in the foregoing amended petition; that he has read said amended
29 petition and knows the contents thereof; that the allegations of fact contained therein are true of his own knowledge excepting those facts therein stated on information and belief, and as to such he verily believes them to be true.

J. W. ENGLISH.

Sworn to and subscribed before me this 23rd day of May, 1891.
W. J. SHOCKLEY,
N. P., F. Co., Ga.

STATE OF GEORGIA, }
Fulton County. }

Personally appeared before the undersigned J. W. English, who, being duly sworn, deposes and says that he is vice-president of The Columbus Southern Railway Company, the petitioner named in the foregoing amended petition; that he has read said amended petition and knows the contents thereof; that the allegations of fact therein contained are true of his own knowledge, excepting those facts therein stated on information and belief, and as to such he verily believes them to be true.

J. W. ENGLISH.

Sworn to and subscribed before me this 23rd day of May, 1891.
W. J. SHOCKLEY,
N. P., F. Co., Ga.

Demurrer.

THE COLUMBUS SOUTHERN R'Y CO. }
vs.
W. A. WRIGHT, Comp. Gen'l *et al.* }

Petition to enjoin certain tax *fi. fas.* for the benefit of certain counties and for final relief, &c., in Fulton sup. court, spring term, 1891.

And now comes the defendant in the above-stated case and demurs to said petition, and for cause of demurrer says:

1. That said petition does not set forth any sufficient cause or ground for the relief therein prayed or for any other relief.

2. That the allegations in said petition as amended are in-
30 sufficient in both equity and in law and set forth no sufficient ground or grounds for the relief or judgment prayed for.

3. That there is no equity in said petition and said petition furnishes no equitable cause for the interposition of this court for the purposes therein stated or for the relief therein prayed for.

4. That there is no equity in said petition.

Wherefore defendant prays that said petition be dismissed at petitioner's cost.

CLIFFORD ANDERSON.
Defendant's Attorney.

Filing.

Filed in office May 30th, 1891.

G. H. TANNER, *Clerk.*

Opinion of the Court.

This is the case of a petition filed in Fulton superior court by the Columbus Southern Railway Company against William A. Wright, as comptroller general of this State. The object of the petition is to enjoin the defendant from issuing *fi. fas.* against complainant to enforce the collection of taxes claimed to be due from it to the counties of Muscogee, Chattahoochee, Stewart, Webster, and Terrell, in pursuance of an act approved October 16th, 1889, and entitled "An act to provide a system of taxation of railroad property in each of the counties of this State through which said railroads run and to provide a mode of assessing and collecting the same, and for other purposes." The complainant contends that it has a right to the relief sought because said act is void,
31 being violative of the constitution of Georgia and also the Constitution of the United States. The act is alleged to be repugnant to our State constitution for the five following reasons: 1st, it is inconsistent with that provision in it which requires that all taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax; 2nd, the act is a special one, whereas the Constitution requires that all taxes "shall be levied and collected under general laws;" 3rd, the act provides for a tax "to be levied and collected by the State for the benefit of the counties, whereas the State has no authority under the Constitution to tax for such a purpose; 4th, the act embraces two subjects-matter, to wit, "the property of certain railroads" and "the net income of certain railroads," while the Constitution declares that "no law or ordinance shall pass which refers to more than one subject-matter;" 5th, because the act prescribes that if under its provisions any railroad company shall file an affidavit of illegality against an execution issued to collect the tax which the statute authorizes, such affidavit of illegality shall be tried in the superior court of Fulton county without reference to the domicile of the company, thus conferring upon that court a greater jurisdiction than the Constitution allows. The act is charged to violate the Constitution of the United States in that it conflicts with the clause which declares that no State shall "deny to any person within its jurisdiction the equal protection of its laws."

These several grounds of attack upon the validity of the act in question will be separately examined in the order in which they have been stated. Before this is done, however, it is worth while to observe that the right of the counties to tax railroad prop-
32 erty is not controverted by the complainant. It could not be. The class of property exempt from taxation under our constitution does not embrace that now before the court. Indeed this class is very small, the present constitution being less friendly

to exemptions than any of its predecessors. Whatever is subjected to be taxed may be taxed by the counties, provided the legislature supplies the means. Code, 5190. "Our special legislation as to the taxation of railroads virtually excludes counties and municipal corporations from levying a tax upon them and the appurtenances necessary to maintain and operate them for county and municipal purposes by making no provisions for levying and collecting such tax," says our supreme court. County of Houston *v.* Central R. R., 72 Ga., 211; S. F. & W. R. R. *v.* Morton, 71 Ga., 25; Atlanta *v.* Ga. Pac. R'y, 74 Ga., 16. It is plainly to be inferred that if "provisions for levying and collecting such tax" had been made there would have been no legal difficulty in the way of enforcing it. The act under consideration is assailed, then, not by denying the existence of the right which it asserts, but solely by denying the constitutionality of the method by which it is proposed to render the right effectual.

The first complaint against the constitutionality of the act is that it devises a plan of taxation which is not uniform and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax. A proper decision of the question presented involves, among other things, an interpretation of the word "uniform" in the connection in which it occurs. The primary and literal meaning of the word is "of one form," as its Latin origin obviously indicates. Webster defines it thus: "Having always the same form, manner, or degree; of the same form with others; agreeing with each other; conforming to one rule or mode."

Judicial construction has not given this term when used
33 in relation to taxation what is probably its broadest import.

The supreme court of Ohio in the case of Exchange Bank of Columbus against Hines uses this language: "Taxing is required to be by a uniform rule—that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxation implies equality in the burden of taxation, and equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation. The uniformity must be coextensive with the territory to which it applies. It must be extended to all property subject to taxation, so that all property may be taxed alike equally, which is taxing by uniform rule." 3 Ohio, 15. This extract is quoted by the Supreme Court of the United States with approval in the railroads tax cases. 13 Federal Reporter, 735. That court adds: "As the foundation of all just and equal taxation is the assessment of the property taxed—that is, the ascertainment of its value—in order that the tax may be levied according to some ratio to the value, uniformity of taxation necessarily requires uniformity in the mode of assessment as well as the rate of taxation." The court further says: "In the constitution of several of the States a provision is found requiring 'equality and uniformity' in the taxation of property, and this held to mean that taxes must be levied according to some fixed rate or rule of apportionment so that all persons

shall pay the like amount upon similar kinds of property of the same value." In the case of The Kansas City R. R. Co. *v.* Severance the supreme court of Missouri decides, in substance, that where all property is taxed alike uniformity is attained under a constitution which declares the taxation on property shall be uniform. 55 Mo., 379, 388. Upon the strength of these authorities it may safely
34 be said that a system of taxation which in its practical operation affects all property alike is "uniform" in the sense of the Constitution. This definition would allow the details of the system as applied to different forms of property to be varied in particulars which the widest signification of the term uniform would forbid. Now, while there are palpable differences between the methods adopted by the law for the county taxation of the property of individuals and the methods devised by this act for the county taxation of railroad property, it seems to me that there are differences not inconsistent with uniformity as above interpreted. The result attained in each case is the same exactly. The property of the individual and the railroad company is alike returned at a value fixed by the owner, and upon that value a tax is paid according to a rate established by the proper authorities of the county, and is the same as to all property therein. Such taxation is uniform and ad valorem within the intention of the Constitution.

The taxation provided by this act is alleged to be in several particulars not uniform with that applicable to individuals. The first is that under the act the rate of taxation is not the same in the different counties through which a railroad may run, each county having its own rate; also that "the mode of return, assessment, and collection" of taxes upon railroad property is not the same with that exacted of the individual. In support of the complaint that the rate of taxation varies in the several counties entitled to the tax it is urged by the learned counsel that the tax is one levied by the State itself, and not by the counties, and that, as the Constitution demands a taxation which is uniform "within the territorial limits of the authority levying the tax," this tax must fail, not being so uniform. It seems to me that the argu-
35 ment has reference to the form of the legislation attacked rather than its substance. While the statute is one passed by the State, yet it is for the benefit of certain counties which have within their limits railroad property, and not for the benefit of the State itself. If the latter were true the argument would, of course, be unanswerable. As the act is for the counties, the requirement of the constitution as to uniformity in taxation is met if the same tax rate prevails throughout the whole of each county. There is no suggestion but that this is true. The State, without doubt, has the power to del*e*gate to the counties the right to levy this tax (Code, 5190). Can it not act directly for the counties; and, if it does so act, do not the same consequences follow as to the matter now under consideration as if the counties themselves acted? When a county levies a tax is not the authority exercised really that of the State? This must be so, for the county has no power to tax except that derived from the State. A county, indeed, has no existence save as a

political division of the State. The charge that the taxation is not uniform because "the mode of return, assessment, and collection" is different from that prescribed in the general law is without merit, according to the doctrines already announced, unless the variance causes some inequality in the burden of taxation. This is not claimed by the complainant.

Another objection against the uniformity of the taxation in question is stated thus: "Other corporations and individuals have only such of their property assessed for taxation for the benefit of the counties of the State as lies within the territorial limits of such counties; while with respect to railroad companies only its real property is so assessed and taxed," its rolling stock and other personal property, "wherever located, is by the aforesaid act distributed for taxing purposes, and is assessed for taxation for the benefit of the several counties through which said railroads run in proportion as the value of the property located in the particular county is to the value of the whole property, real and personal, of said company." In reference to a similar question raised in Missouri, the supreme court of that State used the following language: "The rolling stock of a railroad company, as a general principle, should be assessed and taxed where the corporation has its residence; but the principle of law may be modified by the legislature. The notion of the situs of personal property following the personal residence of the corporation is a legal fiction, but is not an unbending and uncontrollable principle of law. It may be modified by the legislature. The rolling stock of a railroad company has no more local existence in one county than another. This machinery by which the road is operated is constantly passing from one terminus to the other of the entire road, and to save all cavil and dispute in respect to it it was perfectly competent for the legislature to say that it should become a part of the road itself and become property the same as the road, and that for the purpose of taxation it should be equally distributed through the counties, cities, or towns through which it passed in proportion to its length in these respective localities." 55 Mo., 379, 388. The same view finds expression in the following extract from Cooley on Taxation: "The difficulties of assessing lines of railroads which extend through many municipalities in the same way that property in general is assessed are so great and so obvious that in many States it is not attempted, and a franchise tax is imposed as a substitute for all other taxation; but in other States a railroad is listed, assessed, and valued as an entirety and the value then apportioned by taxation between the several municipalities by some standard prescribed by law, which is generally the length of
37 line in the municipalities respectively. There is no constitutional objection to that method of taxing this species of property, and it is perhaps more just than other. The rolling stock and other personalty of the company should be assessed at the place of its home office, unless some other provision is made by law, and under some statutes the rolling stock is considered real estate and is estimated with the road itself." Cooley on Taxation,

sec. ed., 383, 384. These extracts appear to settle adversely to the complainant the question here presented.

The second reason assigned by complainant why the act is unconstitutional is that it is a special act, while, according to the constitution, taxes must be levied and collected under "general laws." Code, 5181. It is insisted that in order for a taxing act to be general it is necessary for it to embrace all property and to deal exactly alike with it all. This is said to be so because our supreme court has decided that property in the aggregate constitutes for purposes of taxation but a single class. 82 Ga., 141; 84 Ga., 683. It does not seem to me that a tax law to be general must have so comprehensive a scope as is contended by complainant. The word general signifies, as its derivation denotes, "pertaining to a whole class or order." This act relates to a class—namely, railroads. The State government has certainly proceeded so far in the matter of taxation upon the idea that it could adapt its legislation to the form and situation of property. To mention a familiar and conspicuous example, railroads, insurance and express and other corporations make their returns to the comptroller general, and upon default in payment an execution is issued by that officer. Other companies and persons, with some few exceptions, make returns to the "receivers of the respective counties where the person resides or the office of the company is located," and upon
38 failure to pay their taxes *fi. fas.* are issued against them by the tax-collector of such respective counties. Code, sections 826, 833, 876, 882; acts 1884–5, 25, 26; acts 1886, 20, 21, 22; acts 1888, 24, 26, 28.

The third act upon which the act is claimed by the complainant to be unconstitutional is that by it the State levies a tax for the benefit of counties, whereas under par. 1, sec. 1, art. VII, it has authority to levy a tax only for certain purposes therein enumerated, counties not being mentioned. Code, 5180. In reply to the argument here presented it may be said that the constitution elsewhere provides that "the General Assembly shall have power to delegate to any county the right to levy a tax," and then specifies for what a tax may be levied by a county. I see no good reason, as above argued, why the State may not by a direct act accomplish that which it may do through medium of delegated authority. It is true, county taxation is usually effected through such authority, because the counties are supposed to know best their own wants and because local self-government is a cherished theory of our political system, but there is no legal necessity that this taxation should be so conducted.

The fourth particular in which the act is charged to be unconstitutional is that it embraces more than one subject-matter. The subject-matter in general of the act is "the taxation of railroads property." I do not find in the body of the act anything which may not fairly be included under this head. I may add that if this act is invalid for this reason the same would be true of nearly every tax act which is passed, as may readily be seen upon the inspection of one of them.

The complainant says, in the fifth place, that the act is unconstitutional because the affidavit of illegality for which it provides is made returnable and triable in the superior court of Fulton county, without any reference to the domicile of the defendant in
39 such affidavit, and a jurisdiction is thus conferred on that court above all others, and greater than the constitution allows. Code, 5156, 5172. A sufficient reply to this view is that the State may altogether refuse to allow any judicial interference with the collection of its taxes, and may, therefore, when it grants the citizen the privilege of litigating with it on this subject well prescribe the terms upon which he may do so.

The complainant further sets up in his petition that the act is repugnant to the 14th amendment of the Constitution of the United States in that the State thereby denies the complainant, "a person within its jurisdiction, the equal protection of its laws." If what has already been said in this opinion be sound, there is certainly no merit in this last ground of attack upon the act.

The prayer for injunction is accordingly denied.

This August 29th, 1891.

MARSHALL J. CLARKE, *Judge.*

CLERK'S OFFICE, SUPERIOR COURT OF FULTON COUNTY,
ATLANTA, GA., *September* 28, 1891.

I hereby certify that the foregoing pages hereunto attached contain a true transcript of such parts of the record as are specified in the bill of exceptions and required by the order of the presiding judge to be sent to the supreme court in the case of The Columbus Southern Railway Company, plaintiff in error, *vs.* Wm. A. Wright, compt. general, defendant in error.

I further certify that the August, 1891, chambers term of said court, at which said case was tried, adjourned August 29th, 1891; all of which appears from the record and minutes of said court.

40 Witness my signature and the seal of said court affixed the day and year first above written.

[OFFICIAL SEAL.] G. H. TANNER,
Clerk Superior Court, Fulton County, Ga.

41 [Endorsed:] No. 55. Atlanta circuit. supreme court of Georgia. October term, 1891. The Columbus Southern Railway Company, pl'ff in error, *vs.* Wm. A. Wright, compt. gen'l, def't in error. Transcript of record. Filed in office this 5 day of October, 1891. Logan Bleckley, deputy clerk supreme court. Little, Wimbish & Little, att'ys pl'ff in error.

42 Supreme Court of the State of Georgia.

ATLANTA, GA., *January* 18, 1892.

The honorable supreme court met pursuant to adjournment.

Present, all of the justices.

The following order was passed:

THE COLUMBUS SOUTHERN R. R. Co.
v.
WRIGHT, Comp. Gen'l.

It is ordered that the above-stated case be reargued on the third Monday in February next, and that the following questions be submitted to counsel for discussion. All counsel interested in cases arising under the act of 1889, providing for the taxation of railroads, whether employed in this particular case or not, may file briefs relating to the questions here submitted:

1. If those railroads in this State which are taxed on the basis of their net incomes are required by the State to pay the full amount fixed in their charters, can any further tax be imposed upon them for county purposes? If not, does any defect in this law as to taxing them invalidate the law?

2. The charters of certain railroads in this State limit the amount of taxation which can be imposed on their property. If, after taxing these companies for State purposes to the full extent authorized by their charters, the State can constitutionally impose upon them an additional tax for county purposes, will the fact that this act makes no provision whatever for imposing county taxes on railroads whose property is taxable upon the basis of their gross incomes (such as the Augusta & Savannah railroad) invalidate this act for want of uniformity, in that it does not operate upon all the railroads in the State? (See Sav. & Augusta R. R. tax case, 62 Ga., 468.)

3. There being certain railroad companies (see 62 Ga., 473, 43 485) whose property is taxable up to a certain amount in value at the charter rate and the excess above that amount at the general rate, can this act, under the system of returns therein directed to be made to the comptroller general, be applied to this class of railroads? If it cannot, how can the act be reconciled with the constitution?

4. There being at least one railroad (the Central) the main line of which is in one part (Atlanta to Macon) subject to general taxation, and in another part (Macon to Savannah) subject to taxation limited by its charter, can this act be applied to that road? For instance, how can the rolling stock be apportioned between the two divisions of the road mentioned?

5. Can the words "Fourth, showing the value of the company's property in each county through which it runs," used in the first section of the act, be construed to mean that the company's return must show separately the value of realty and of personalty belonging to the company located in each county? Is it not necessary to give them this construction in order to enforce constitutionally the scheme of taxation provided by the act? If they cannot be so construed, how can the act be enforced without twice taxing the personal property of the company located in the several counties?

44 Supreme Court of the State of Georgia.

ATLANTA, GA., *April* 19, 1892.

The honorable supreme court met pursuant to adjournment.

Present: Their honors L. E. Bleckley, chief justice, and *and* Sam'l Lumpkin, associate justice.

The following judgment was rendered:

COLUMBUS SOUTHERN R'W'Y CO.
v.
W. A. WRIGHT, Compt. Gen'l.

This case came before the court upon a transcript of the record from the superior court of Fulton county, and, after argument had, it is considered and adjudged by the court that the judgment of the court below be affirmed.

Bill of Costs.

Entering case	$6 00
Recording opinion	75
Remitter	2 00
Sheriff's fees	1 25
	$10 00

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *May* 16, 1892.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that plaintiff in error paid the above bill of costs.

Seal Supreme Court of the State of Georgia, 1845.

Witness my signature and the seal of said court, affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

45 (55, Atlanta.)

THE COLUMBUS SOUTHERN R. CO.
v.
WRIGHT, Compt. Gen.

By the COURT:

1. As respects railroad companies having no exemption, a statute is not unconstitutional which provides for taxing railroad property for county purposes at the regular rate ad valorem which is levied by the county authorities on other property, each county through which a road runs being allowed to tax at that rate all the company's property, real and personal, located in that county, and in addition thereto its due proportion of the rolling stock and other floating or unlocated property of the company—that is, a proportion corresponding to the ratio between the company's property, real and personal, located in the given county, and the aggregate of its

located property in all the counties through which the road runs. Properly construed, this is the scheme and purpose of the act of October 16th, 1889, on the subject of taxing railroad property for county purposes. The act is a general, not a special law, and, except as necessarily checked and qualified by irrevocable exemptions previously granted, it is uniform, equal, and just. It is not wanting in uniformity because it recognises and seeks to abide by inviolable charter rights of such railroads (if any) as can be taxed for county purposes only upon the basis of their net income, there being in fact, under existing conditions, no
46 such railroads now in the State. Nor because it requires rolling stock and other floating personalty to be apportioned for county taxation amongst the several counties through which the respective railroads run. Nor because it requires returns to be made to the comptroller general of the State instead of to the tax-receivers of the several counties, and designates that officer and not the tax officers of the counties to calculate the amount of taxes due to each county according to the returns and to issue execution therefor. The nature of railroad property and its involved relations with the several counties interested render the services of an officer common to all the counties appropriate for securing a correct and effective performance of these ministerial functions.

2. The act in question neither imposes a State tax for county purposes nor attempts to levy county taxes directly by the State. It provides for taxing railroads for county purposes by and through the action of the county authorities, the rate in each county being fixed by such authorities and being the same for all kinds of property. That different counties fix different rates is of no consequence, one and the same rate only being applied to property located in a given county.

3. The act refers to but one subject-matter, and contains nothing different from what is expressed in its title.

47 4. The State does not by this act deny to any person or railroad corporation the equal protection of its laws, and consequently there is no conflict with the 14th amendment of the Constitution of the United States.

Judgment affirmed.

48 (≡ 55, Atlanta.)

THE COLUMBUS SOUTHERN R. Co. }
v.
WRIGHT, Compt. Gen'l. }

LUMPKIN, *Justice:*

On October 16th, 1889, the legislature passed an act entitled "An act to provide a system of taxation of railroad property in each of the counties of this State through which said railroads run and to provide a mode of assessing and collecting the same, and for other purposes." Acts 1889, p. 29. The Southern Columbus Railway Company made its returns for the year 1890, as the act required, to the comptroller general, who was proceeding regularly in the

manner prescribed by the act to enforce the collection from said company of the taxes thereby imposed, when the company filed in the superior court of Fulton county an equitable petition to restrain him from so doing on the ground that this act, in the several specified particulars below mentioned, was violative of the constitution of this State and of the United States. On demurrer the petition was dismissed by the court below, and this judgment is assigned as error.

The petition alleges, in the first place, that the act is contrary to article 7, section 2, par. 1, of the constitution of Georgia, which declares: "All taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and
49 shall be levied and collected under general laws." It is contended that this paragraph is violated for the following reasons:

First. Because section 3 of the act provides for assessing upon some railroads county taxes based upon property valuation, and these "railroads are assessed for taxation upon their personal property, wherever located, in the proportion as the value of the property located in each particular county bears to the whole property, real and personal, of said company," while section 4 of the act provides as to certain other railroads a method of assessment based upon their net income "and in the proportion as the number of miles of road in the several counties through which said railroad runs bears to the whole length of such railroad."

Second. Because the act prescribes a mode of assessing railroad property for taxation different from that prescribed by the general law for taxing other corporations and individuals, in this, that the latter are taxed for the benefit of counties only on their property within the limits of such counties, whereas with respect to a railroad company "its rolling stock and other personal property, wherever located, is by the aforesaid act distributed for taxing purposes and is assessed for taxation for the benefit of the several counties through which it runs, whether or not such personal property be within the territorial limits of such particular county, in proportion as the value of the property located in that particular county is to the value of the whole property, real and personal, of said company."

50 Third. Because the State is the authority levying the tax under this act, and the rate of taxation is different in each of the several counties through which the road runs.

Fourth. Because the act is a special law and repugnant to the clause of the above-quoted paragraph of the constitution requiring "that all taxes shall be levied and collected under general laws."

The petition further alleges that this act also violates the following provisions of our constitution, viz:

Article 7, section 1, which enumerates the different purposes for which the legislature may impose taxes, among which is not included any provision authorizing the legislature to tax property for the benefit of counties; art. 3, section 7, par. 8, which declares that no law shall pass referring to more than one subject-matter or con-

taining matter different from what is expressed in the title; art. 6, section 9, par. 1, providing for uniformity in the jurisdiction, powers, proceedings, and practice of courts of the same grade, it being alleged that under this paragraph the act could not confer upon the superior court of Fulton county jurisdiction of the case.

The petition still further alleges that this act also violates that clause of the 14th amendment of the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

We will endeavor to discuss in the order above set forth the questions raised by the petition.

51 1. It will be seen that four objections are made to the act as infringing the uniformity requirement of the constitutional paragraph above referred to. The only distinct point made by the first of these is that the act provides one system of county taxation for certain railroads based upon their net incomes, and another system for other railroads based upon an ad valorem valuation of their property. Long prior to the adoption of our code the legislature, in the charters of certain railroad companies, limited the taxation to be imposed on their property to a certain per cent. of their net incomes, and in the case of at least one railroad, the Augusta and Savannah, to a certain per cent. of its gross income. In effect these charters gave the companies indicated partial exemptions from taxation, and under decisions made by the Supreme Court of the United States are inviolable contracts between the State and the railroads. The legislature in passing the act now before us evidently took into consideration the facts just stated, and, in view of the contingency that the general scheme of taxation contemplated might not be applicable to these companies, undertook to inaugurate a system of county taxation of railroad property which would operate upon every railroad in the State, and thus meet all the requirements of our constitution. Accordingly the third section seeks to impose upon the property of all railroads in the State a uniform ad valorem taxation for the benefit of the counties through which they run, measured in each particular county by the rate of taxation there prevailing, and the purpose of the fourth

52 section is to impose upon the property of railroads having charter exemptions a system of taxation for the benefit of counties to the full extent authorized by the charters of such railroads in the event the third section could not be applied to them. It was undoubtedly intended to include in the terms of the act all railroads in the State, but by mere inadvertence no distinct or express provision is made for a railroad whose property is taxable only upon the basis of its gross income, or for railroads a portion of whose property is taxable at a limited charter rate and the remainder at the general rate applicable to all other kinds of property. It is as to the railroads in the condition last mentioned that we experience the greatest difficulty in giving the act a practical enforcement, but we will endeavor to show, before concluding, that the difficulty is by no means insuperable. The omission to provide expressly for a railroad like the Augusta & Savannah in view of what

will follow is of slight consequence. We have now reached the point where it will be proper to discuss and dispose of the fourth section of the act. The result of our deliberations is that this section is not a vital portion of the law, but is really inoperative and needless. In the first place, we will observe, as already intimated, that the section itself does not affirmatively assert there is any railroad or class of railroads in the State the property of which is taxable for county purposes on the income basis. It begins by saying "that should the property of any railroad company in this
State be not subject to taxation [*i. e.* taxation on the ad valorem
53 basis for county purposes], as hereinbefore provided, but
taxable [for the benefit of counties] upon its net income, such railroad company shall report," etc. The words inserted in brackets show the true meaning of the section, and thus understood it is wanting in any express declaration that there is in the State any railroad which cannot be taxed for county purposes on the ad valorem basis, as provided in the preceding section. Consequently, having reference to the act alone, we would not be at liberty in the absence of proof to assume the existence of any such railroad, though we may otherwise know the fact that there are railroads having property taxable for State purposes on the income basis only. So far as the record in the case at bar is concerned we have no evidence that there is in Georgia any railroad the property of which, if taxable at all for county purposes, is not taxable under the provisions of the third section of this act, and in order to sustain the objection that the act is wanting in the uniformity required by the constitution, because it does not operate alike upon all railroads in Georgia, it would be incumbent on the plaintiff in error to show the existence of one or more railroads upon which the act could operate, but which it fails to cover. Nothing of the kind having been done, we might perhaps properly dispose of the present case upon the idea that neither in the law itself nor in the record is there any positive statement or proof that there is a single railroad in Georgia to which the provisions of the act outside of the fourth section
are not applicable. We have no disposition, however, to
54 confine the decision of this case within such narrow lines or
to evade questions which must inevitably arise under this act in the progress of its further enforcement when it is made to appear, as will certainly be done, that there are railroads in this State whose property, either in whole or in part, is taxable for State purposes upon the income basis of measuring the taxes. The physical existence of such railroads is at last a matter of no great importance. The real question is, can railroad property which is taxable only on the income system be subjected to any further taxation after the State has already exacted for State purposes the full limit of taxation authorized by the charters of the companies owning such property? This question must, in our opinion, be answered in the negative. When a charter which has been held by the highest court in the land to be a contract between the State and the railroad, which the former cannot impair or violate, expressly declares that the railroad's property shall not be taxed beyond a

certain limit, it seems to our minds free from all doubt that the State cannot for any purpose or in any manner exceed this limit. The proposition is too plain to admit of serious argument, and we therefore pass it as satisfactorily established. This being true, the existence or non-existence of railroad property taxable upon the income basis only is, so far as attempting to tax it for county purposes is concerned, immaterial, if in fact the State has already exhausted its power of taxation upon this property. If there is such property the State cannot tax it further, because forbidden by the charter
55 rights of the company or companies owning it; if there is not, then there is no such property to be taxed, and in either event there is nothing upon which this section can operate. It is a part of the public history of Georgia, of which we cannot effect to be ignorant, that the railroads having these charter exemptions from full taxation have never, when taxed at all, been taxed less than the limit allowed by their charters, and the strong presumption that this policy will be continued in future affords, in view of what has been said, ample justification for disregarding this section entirely. There is not now, nor ever likely to be, any railroad property taxable on the income basis which can be taxed at all for county purposes, and this section refers to no other kind of property. As long as the general rate of State ad valorem taxation produces from property of a given value an amount of tax exceeding that which would be produced from railroad property of like value, taxed to the full charter limit, it may be that, under the principle announced in Atlanta & Florida R. R. Co. *v.* Wright, comp. gen'l, 87 Ga., 487, the State will be compelled to continue the policy above mentioned. At any rate, the contingency that this fourth section will ever be capable of having any practical operation is entirely too remote to be urged as a reason for regarding it as a material part of the act, when by so doing the enforcement of this wise, just, and salutary law might be seriously embarrassed. It seems clear, therefore, that the act may properly be treated as if it did not contain the fourth section. Where a
56 portion of an act is for any reason inoperative the remaining portions of it may and should be upheld if capable of enforcement. This act is really complete and entirely adequate to accomplish the purpose for which it was designed without the fourth section. Its phraseology, leaving this section out, is sufficiently broad to cover all the railroads in the State, and there is nothing to suggest that any railroad whatever which ought to be included was omitted or intended to be from the general scheme of the law. Indeed, there can scarcely be a doubt that this section was inserted as a mere matter of precaution to cover, if necessary, railroads having partial exemptions from taxation and thus provide against an objection to the constitutionality of the act, which might be raised if it should appear that one or more of these railroads was liable to county taxation. This precaution was not necessary and the section might have been altogether omitted. The act, without it, undertakes to apply a uniform ad valorem system of county taxation to all the railroads in the State which are sub-

ject to such taxation. If it cannot be enforced as to some railroads because of peculiar exemptions in their charters, it should not for this reason be set aside. This, in principle, was ruled in the Atlanta & Florida case, *supra*. See first head-note and comments of Simmons, J., on page 489. So far as the plaintiff in error in this case is concerned it has no right to complain of the act for want of uniformity growing out of the manner in which it attempts to deal with the class of railroads whose property is partially ex-
57 empted from taxation. If they have been already taxed in the only manner and to the full extent the legislature can tax them no fault should be found with the law because its efforts to tax them further for the benefit of the counties is futile. The uniformity requirement of the constitution, for the reasons stated in the case just cited, is not, because of the failure of this effort, violated. Whenever it is sought to enforce the act against a railroad upon which it cannot operate and the objection is properly made the courts can pass upon the questions then presented and afford such railroad its rightful protection.

We have in this branch of the discussion proceeded thus far upon the assumption that there might actually be some railroad companies in this State whose entire property is, under their charters, taxable, up to a certain limited rate, upon the income basis of measuring the taxes, but, as at present organized and consolidated, there is not, perhaps, a single railroad company in Georgia exactly in this condition. Practically there are, we presume, but two classes of railroads with which we have to deal:

First, those having no exemptions from taxation, and, second, those having some property taxable upon the income basis and other property taxable at the general rate.

We will now endeavor to show how the act can operate upon each of these two classes, respectively, although, as already stated, it does not expressly provide in distinct terms for the latter.

The first section provides for the making of an annual return by each of the railroad companies of Georgia to the
58 comptroller general. It would seem that the "rolling stock" and "all other personal property," the value of which is required to be shown by the third item of the return, are to be valued separately, for their gross value would appear by simply subtracting the amount returned in the second item from that returned in the first. It is, however, of but little importance whether this construction be correct or not, because this third item seems to be of small use, unless it may aid in verifying the correctness of other parts of the return.

The second section of the act is plain and easily understood. Some difficulty arises as to making the proportion provided for by the third section. It was argued with considerable plausibility that following its requirements would not exhaust the property of the railroads to be distributed for taxation among the counties. We copy the following illustration from the argument of our talented brother Wimbish:

"In this connection the attention of the court is called to a fatal

error in the mathematics of the act which seems to have hitherto entirely escaped observation. The rule prescribed for ascertaining the amount of rolling stock and other personal property to be distributed to the various counties is as follows:

" 'As the value of the property located in the particular county is to the value of the whole property, real and personal, of said company, such shall be the amount of rolling stock and other personal property to be distributed for taxing purposes to each county.'

59 "Suppose the entire value of the company's property is $300,000, of which $100,000 consists of rolling stock and other personal property to be distributed; $200,000 is the value of the real estate and track-bed, which is located in two counties equally, county A having $100,000 and B having $100,000. Now, we desire to ascertain the amount of rolling stock and other personal property to be distributed in each of these counties. As the value of the property located in the particular county ($100,000) is to the value of the whole property, real and personal ($300,000), such shall be the amount of rolling stock and other personal property to be distributed to such county ($\frac{1}{3}$rd of $100,000=$33,333$\frac{1}{3}$).

"Therefore the statement is as follows:

"To A county	$33,333$\frac{1}{3}$
"To B county	33,333$\frac{1}{3}$
	$66,666$\frac{2}{3}$

"This leaves a deficit of $33,333$\frac{1}{3}$, equal to one-third of the entire value of the rolling stock and personal property, which is not taxed at all (unless the words 'rolling stock and all other personal property,' as used in the first section of the act, includes both located and unlocated personalty, in which event one-third of the rolling stock would entirely escape taxation, while two-thirds of the other personal property would be twice taxed)."

Taking the words of the third section literally, it seems that
60 the result would be as shown in this illustration, but this would necessarily impute to the legislature the improbable and absurd purpose of leaving a part of the personalty of each railroad untaxed and double taxing other parts of it. This, certainly, could not have been its intention. The act seems to contemplate that a railroad has two kinds of personalty—located, having a fixed and actual situs or abiding place for the time being, and unlocated, being movable, like rolling stock, and frequently shifting its place. Of course, the realty is absolutely fixed and immovable, and always remains so. The scheme of the act is to tax the located property of the railroad, real and personal, in each county where it is situated at the county rate of taxation of force in that county, and to apportion the transitory, frequently moving personalty in fair proportion among the several counties. This class of property may be fairly said to be situated at one place as well as another, or to "reside," if that word is allowable, along the entire length of the road. Having no fixed situs, it is absolutely right to apportion it,

and this is really all that could be appropriately done with it for taxing purposes. The unlocated property of the road, therefore, is to be distributed in just proportion to the portions of located property (real and personal) situated in the several counties.

It is manifest that in making a proportion for the purpose of ascertaining the amount of a particular share in a distribution of any kind the thing to be divided, and which constitutes one term
61 of the proportion, should not be added to either of the other terms. It must be kept separate, and the share arrived at by the ratio which the smaller of the remaining terms bears to the other.

The first term of the proportion contemplated by section 3d, "the value of the property located in the particular county," is literally as it should be. The second term, "the value of the whole property, real and personal, of the said company," should be construed to have the meaning it would have if the word "located" were inserted after the word "whole." This unquestionably is the purpose of the law, and thus understood it is logical, natural, and fair—that is, the transitory personalty which a county would draw to itself for taxation would be in the proportion the company's located property in that county bore to the entire located property of the company. Otherwise the proportion would have the vice, already pointed out, of adding the thing to be divided to one of the other terms.

We have long and anxiously studied and examined this act, and, being convinced that we understand its true intent and meaning, we do not hesitate to give effect to that intent by adopting the construction stated. The law is too wise, too just, and too important to be defeated by sticking in the bark and adhering to the literal meaning of words when by so doing we would not only set at naught the legislative will, but impute to our law-makers the folly of making a provision at once mathematically absurd and legally impracticable. Nor is our construction of the words in question at all strained. It is perfectly fair to assume that the law means
62 to declare the located property in a county shall draw for taxation its share of the distributable property in the proportion this located personalty in the county bears to the whole property of the company, real and personal, of like kind—that is, the whole located property of the company. Let it be borne in mind it is the located property, situated in the different counties, to which the unlocated is to be added in proper proportions for the purpose of being taxed, in order that the aggregate of the unlocated personalty as well as all the located property, real and personal, may be rightly taxed. This could never be done by giving the words of the act their literal meaning, but can be easily done in the manner shown. If one construction meets and effectuates the plain purpose of the law, and another defeats it, the former should prevail.

To further explain the operation of the law, let us suppose that a railroad traversed four counties, and that the return required by the act showed the following figures. Those selected are, of course, arbitrary, and round numbers are used for the sake of simplicity,

but the principle is applicable to any return by a railroad company lawfully made.

1. Aggregate value of whole property of railroad.....			$3,000,000
2. Value of real estate and track-bed.....	$2,000,000		
3. Value of rolling stock.....	$550,000		
Value of all other personalty (located and unlocated).....	450,000		
		1,000,000	
			$3,000,000
4. Value of property (real and personal) located in county A.....			$1,200,000
Value of property (real and personal) located in county B.....			600,000
Value of property (real and personal) located in county C.....			400,000
63 Value of property (real and personal) located in county D.....			200,000
The sum of these values.....			$2,400,000
Deducted from $3,000,000, the entire property of the company, will leave.....			600,000

which will be the value of the rolling stock and other unlocated personalty.

Again, deduct from the $2,400,000 of located property, real and personal, the $2,000,000 of realty and it will leave $400,000, the value of the located personalty.

This $400,000 taken from $450,000, the total value of personalty, exclusive of rolling stock, will leave $50,000 of unlocated personalty besides the rolling stock.

Then add the following:

Rolling stock.....	$550,000
Other unlocated personalty.....	50,000
Total unlocated personalty.....	$600,000
Located personalty.....	400,000
And we have the grand total of personalty.....	$1,000,000

which is the amount shown by the third item of the return.

The property upon which the tax is to be assessed in county A would be, first, the property located therein, $1,200,000, and, second, its proportion of the $600,000, representing the rolling stock and unlocated personalty. To ascertain this our statement of the proportion to be made under the act as we construe it would be as follows:

As the value of the property located in the county, $1,200,000, is to the value of the whole located property of the road, $2,400,000,

so is the unlocated property to be taxed in that county, $—,
64 to the whole unlocated property of the road, $600,000. Upon solving this proportion the blank will be filled with $300,000, which added to the $1,200,000 above will give $1,500,000, the amount upon which taxes should be assessed for county A. Pursuing the same method, we will obtain for the counties B, C, and D, respectively, $750,000, $500,000, and $250,000, and all these sums added together will make $3,000,000, the total value of the company's property.

It will be observed that in applying the act as shown in the foregoing illustration the words "rolling stock and other personal property" in the clause, "Second, the amount of tax to be assessed upon the rolling stock and other personal property is as follows," are treated as meaning the rolling stock and other unlocated personal property of the company. That this proper seems inevitable. The first section of the act requires that the third item of the return to be made by the company shall show "the value of the rolling stock and all other personal property of said company"—*i. e.*, the total value of the company's entire personalty of every kind whatever.

In the clause of the third section now under consideration the significant word "all" is omitted. Moreover, the taxation of the located personalty is fully provided for in the preceding clause, for when such property in each and every one of the counties is taxed as located therein it will result that all of it has been taxed. The word "other," therefore, as here used must mean "other
65 than located"—*i. e.*, the unlocated personalty or personalty of like nature with rolling stock.

If the words "other personal property" in this section of the act should be construed as meaning "all other personal property," the located personalty of the company would be twice taxed, because it would in any particular county be taxed directly as located therein, and its value would be included in the sum total of "rolling stock and other personal property" to be distributed for taxation among the several counties traversed by the road and thus taxed again. It cannot for a moment be supposed that the legislature intended any such result as this, and any construction leading to this conclusion must, of course, be discarded. It cannot be denied that in many particulars, to some of which we have already alluded, the meaning of this act might have been more clearly and satisfactorily expressed and the method of its enforcement made plainer, but its real scheme and purpose are sufficiently obvious to justify us in upholding it. As we understand the law the system of county taxation it inaugurates is both uniform and fair.

Upon property actually located in a county the county rate of taxation is assessed as upon the property of all other persons and corporations in that county. This is certainly free from all objection. Property such as rolling stock, car furniture and fixtures, tools, and all other kinds and descriptions of personalty having no physical location or situs may, as we have stated, be fairly con-

sidered as belonging as much in one county traversed by
66 the road as another, and if each county gets its tax only upon its fair proportion thereof under the distributive method provided by the act the doctrine of uniformity is not violated, but absolute equality is maintained. We have shown clearly that under this system each county draws to itself for taxation such a proportion of the unlocated personalty of the railroad as the railroad's property located in that county bears to the total aggregate of all its located property, and thus is given to each county in fair ratio the just compensation due it for the measure of protection it affords the company's property actually or constructively within its limits.

Having shown, we think, satisfactorily that the law may be maintained and enforced justly against railroads having no charter exemptions from taxation, we will now consider its applicability to those railroads a part of whose property is taxable for State purposes at a charter rate and a part at the general statutory rate applicable to the mass of all other kinds of property within the State, for unless this class of railroads is also subjected to the burden of county taxation as far as such burden can be properly imposed the law would not meet the requirements of the constitution.

The principal difficulty is presented in the objection that under the system of returns required by the act no means are afforded for separating the property of a railroad into the two portions indicated, one taxable upon one basis and the other upon another, and that therefore it is impossible to enforce the act at all as to
67 this class of railroads.

While the act does fail to provide expressly for such a separation of any railroad's property in the returns to be made, its terms are broad enough to apply to and reach all the railroads in the State, and all of them without exception must make returns. If any railroad of the class now being discussed should make returns precisely as required by the act, but refuse to pay the county taxes assessed upon the basis of such returns on the ground that a portion at least of its property could not be thus taxed, and accordingly the comptroller general should issue a *fi. fa.* for the whole amount of the taxes, then upon a proper defense the whole matter could be so adjusted in the courts—as was done heretofore in the State tax cases against railroads—that only the lawful taxes would be required. Indeed the act provides that any railroad company may dispute its liability to the tax imposed by the act by an affidavit of illegality, but we do not think there need be any appeal to the courts by railroads of the class now being considered, nor is it necessary to so hold in order to carry this law into effect. The officers of each railroad know its precise condition in the respects mentioned, and can easily separate its property into the parts taxable respectively on the income basis and the ad valorem basis, and can make this all appear in their returns. For this purpose the different portions of property taxable upon different bases may be treated as if they were the property of separate and distinct railroads.
68 The propriety of so doing is sustained by the reasoning of Mr. Justice Strong in Central, etc., R. R. *v.* Georgia, 92 U. S.,

665. In reply it may be said the act in question does not require any returns of the kind indicated to be made. The answer is that the act deals alike with all the railroads in the State outside of those hypothetically referred to in the 4th section. That section cannot, in any view of it, apply to the class of railroads with which we are now dealing, and they therefore undoubtedly are covered by the other portions of the act and are treated primarily as if they had no exemptions or special privileges whatever. If any of them claim to have such it is incumbent on them to show the fact, and why and to what extent. To do this by making suitable returns is therefore not a burden, but a privilege, and, though the act does not expressly so require, nothing in its terms forbids a railroad company from making fuller and more explicit returns if necessary for its own protection, and such a course on the part of a railroad company would certainly be in harmony with the general principles of law and justice.

Upon so much of the property (or its value) of a railroad of this class as is taxable upon the income basis there is no further liability for county taxation, when the State has taken for State purposes the full amount of tax authorized by the charter. This would also be true of any railroad in the State, if there be one, which we have already doubted, whose entire property is taxable upon the income basis only. In either case, by proper returns to the comptroller general, all difficulty may be avoided.

69 It was stated in the argument that, although the charters of some of the railroad companies in this State to which we have referred limited the amount of taxation which could be taken for State purposes, nothing contained in those charters would prevent the taxing of such companies for county purposes, and that they are liable to be so taxed under the act before us. We express no opinion on this matter further than to say that if the above position is correctly taken this law can, of course, be enforced against such companies in the same manner as if they had no exemptions whatever.

The next objection made by the petition is that the requirement of the constitution as to uniformity in taxation is violated because certain personal property of railroads is taxed for the benefit of counties, though not situated therein, while as to other corporations and individuals county taxation is imposed, so far as any particular county is concerned, only on property within its territorial limits. This objection is disposed of by what has already been said. We have shown that in each county its rate of taxation is applied to the property of the railroad actually located therein, and that it is perfectly just and proper to distribute the unlocated personalty of the road for taxing purposes in fair proportion among the several counties, the corporations residing *sub modo* in all the counties along its line of road, and therefore in one as much as in another.

In the next place, it is contended that the same paragraph of the constitution is violated because the act prescribes a different
70 rate of taxation in each of the several counties through which a railroad passes. The obvious answer to this objection is

that the act does not thus impose any tax substantially different from the county taxes imposed on all other tax-payers. Certainly it does not, in any view of the question, impose any tax for State purposes. It merely provides a means for the county to apply to railroad property its own rate of taxation and collect the tax for county purposes. The vital thing is the rate, and the State has nothing to do with fixing it in any county beyond general regulations restricting its amount and the like. It is entirely immaterial whether mere ministerial acts and calculations, which when correctly done and made can have but one possible result, are the work of the comptroller general or of the county authorities. If the act provides, as we think it does, a constitutional scheme of taxation what possible difference can it make whether the amounts upon which taxes are to be paid are arrived at by one officer or another, such amounts being necessarily the same in either event? As the tax is for the exclusive benefit of the county, and it fixes the rate, it is a county tax, and so long as a county taxes all property within its jurisdiction ad valorem and at the same rate the uniformity required by the constitution is observed, and this is true no matter what functionary acting by law for the county does the necessary ministerial acts. The question is all the more free from difficulty because under our system each tax-payer values his own property for taxation and makes his own returns. So under
71 the present law the railroad can and does make returns to the comptroller general, which serve the same purpose as if it made separate returns to the tax-receivers. It fixes the amounts on which it must pay taxes, and each county fixes its own rate. Hence under this law a railroad would not have to pay more tax than if each county by its own officials attended to the whole business. Not being therefore really injured, the railroads have in this respect no ground of complaint. Indeed under this law these corporations have one advantage over other tax-payers. Returns made to tax-receivers are overlooked by the grand juries, and a system is provided for increasing the valuation of a tax-payer's property when he undervalues it. Code §§ 923 (*b*) *et seq.* No such rule is applied to railroads by this act, but their returns stand as they make them, whatever may be the law as to their returns for State taxation. We will only add that as the act allows corporations whose property is taxable under it to designate in their returns what part of their property (real and personal) is located in a particular county there is no ground for the complaint that the law may subject property located in one county to the rate of taxation prescribed by some other county. If, for example, the plaintiff in error returns a switch-engine as a part of its property located in Muscogee county it will be taxed at the rate prescribed by the authorities of that county and none other.

Another reason assigned why this act is contrary to the above paragraph of the constitution is that it infringes the provis-
72 ion therein that all taxes "shall be levied and collected under general laws," the specification being that the method of collecting the taxes imposed by this act is different from that pre-

scribed by general laws for the collection of other taxes. The reasoning employed under the last head is applicable here. The amount to be collected is the same in any event, and the general features of the means of enforcing payment are substantially the same as in other cases. Our State government, from necessity, has heretofore proceeded, so far as taxation is concerned, upon the idea that legislation could be adapted to the form and situation of the property. For example, railroads, insurance and express companies, and some other corporations are required to make their tax returns to the comptroller general. This is certainly more convenient than any other plan, if not in the very nature of things absolutely requisite. Upon default in paying the taxes the officer last named issues execution. Other corporations and persons make returns to tax-receivers in their respective counties, and upon failure to pay their taxes the tax-collectors issues executions, but the substantial features of the procedure are the same in all these cases. The tax-payer makes his own return, putting his own valuation upon his property; the execution in each case commands the levying officer to make the money out of the tax-payer's property, and the advertisement, levy, and sale are conducted in the same manner in one case as in another. Substantial uniformity in the methods of collecting taxes is thus secured, and this is all that is required.
73 This act makes no further departure from the methods usually employed to collect other taxes than is made necessary and expedient by the nature, situation, and extensiveness of the property, nor is it, for any reason apparent to us, special legislation offensive to our constitution.

2. In the next place, the act is said to violate art. 7, sec. 1, of that instrument defining for what purposes the legislature may impose taxes, and not including therein taxation for the benefit of counties. We have already shown that the taxation provided for by this act is county and not State taxation, and therefore this section of the constitution is not applicable.

3. Again, it is contended that the act violates art. 3, sec. 7, par. 8, of the constitution of this State, because it refers to more than one subject-matter, the point being that it provides for taxing some railroads on a property basis and others on the basis of their incomes. For reasons already stated it is manifest that this position is without foundation.

4. The petition also avers that the act violates that clause of the fourteenth amendment to the Federal Constitution prohibiting any State from denying to any person within its jurisdiction the equal protection of its laws. The contrary of this will appear from the foregoing discussion.

The petition makes one other objection to the act, which the able counsel for plaintiff in error very properly abandoned in this court as not well taken, and for this reason we did not notice it in
74 its order. This objection is that under art. 6, sec. 9, par. 1, of the constitution jurisdiction of cases arising under this act could not be conferred on the superior court of Fulton county. The act, as we have seen, allows the levy of executions issued under

its provisions to be met by affidavits of illegality, and they are made returnable to that court. If a levy of such an execution had been made on property of the plaintiff in error and it had availed itself of the remedy thus offered it would not be heard to say this remedy was not a proper one. So when it voluntarily files in that court a petition seeking to restrain the comptroller general from enforcing this law against it a still stronger reason appears for not permitting it to deny the court's jurisdiction.

As already remarked, we have examined this act most carefully and deliberately. It provides, we think, a reasonable, uniform, and fair system for the taxation of railroads by counties. There is no reason why these corporations, like all other persons, should not bear their share of the burdens of taxation for the benefit of the counties through which they run and from which they derive revenue. Although the act may not in all its parts be absolutely perfect and complete, the purpose of the legislature is sufficiently manifest to be understood, and we have endeavored to show how it may be carried into effect. We would not be authorized, even if we felt so disposed, to set this law aside because of defects which are not vital, and we certainly ought not to do so when we are not
75 only satisfied it is capable of a proper enforcement, but also fully and cordially approve its wise and just provisions.

It is not unconstitutional for any reason assigned in the petition or for any other of which we are aware.

Judgment affirmed.

76 Clerk's office, supreme court of Georgia.

ATLANTA, GA., *June* 6, 1892.

I hereby certify that the foregoing pages hereto attached contain the original writ of error and citation from the Supreme Court of the United States and copies of petition and prayer for reversal, power of attorney to make bond, bond, and assignment of errors in the case therein stated, together with a true and complete copy of the entire record in said case, said record consisting of the following parts, to wit, a copy of the original bill of exceptions, a copy of the transcript of record, and copies of the order for reargument, judgment, decision, and opinion of the supreme court of Georgia.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

Seal Supreme Court of the State of Georgia, 1845.

J. D. HARRISON, *C. S. C. Ga.*

Endorsed on cover: Case No. 15,051. Georgia supreme court. Term No., 753. The Columbus Southern Railway Company, plaintiff in error, *vs.* William A. Wright, comptroller general of the State of Georgia. Filed June 9th, 1892.

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(15,051)

(ADVANCED CASE)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 753.

THE COLUMBUS SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

v.

WILLIAM A. WRIGHT, AS COMPTROLLER-GENERAL OF THE STATE OF GEORGIA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

WILLIAM A. WIMBISH, Columbus, Ga.
Of Counsel for Plaintiff in Error.

Thos. Gilbert, Printer, Columbus, Ga. (25567)

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 753.

THE COLUMBUS SOUTHERN RAILWAY CO.,
Plaintiff in Error,
v.
WM. A. WRIGHT, AS COMPTROLLER GENERAL OF THE STATE OF GEORGIA,
Defendant in Error.

In Error to the Supreme Court of the State of Georgia.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

I.—STATEMENT.

The Columbus Southern Railway Company, the plaintiff in error, and the complainant below, is a corporation organized and existing under the laws of the State of Georgia, with its domicile and principal office, as fixed by its charter, in the city of Columbus, Muscogee county, Georgia. Its line of railway extends from the city of Columbus, in the county of Muscogee, to the city of Albany, in the county of Dougherty, penetrating also the counties of Chattahoochee, Stewart, Terrell, Webster and Lee. All of the Company's property is situated in the county of its domicile—Muscogee—excepting its right-of-way, road bed, superstructures, depots and usual appurtenances along the line of its railway.

Record, p. 9.

The Legislature of the State of Georgia, at its summer session in the year 1889, adopted an Act, approved October 16 1889, as follows, to wit:

No. 399.

An Act to provide a system of taxation of railroad property in each of the counties of this State through which said railroads run, and to provide a mode of assessing and collecting the same, and for other purposes.

SECTION I. *Be it enacted by the General Assembly of this State, and it is hereby enacted by authority of the same*, That hereafter in each and every year, on or before the first day of May, each and every railroad company in this State, shall make an annual return to the Comptroller-General of this State, for the purposes of county taxation in each of the counties through which said road runs, in the following manner: Said return shall be under the oath of the president or other chief executive officer, and shall show the following facts as they existed on the first day of April preceding, to wit: First, showing the aggregate value of the whole property of said railroad company; second, showing the value of the real estate and track bed of said company; third, showing the value of the rolling stock and all other personal property of said company; fourth, showing the value of the company's property in each county through which it runs.

SEC. II. *Be it further enacted by the authority aforesaid*, That whenever the amount of the tax levy of any county through which the said railroad runs, is assessed by the authority of such county, it shall be the duty of the Ordinary thereof to certify the same and transmit such certificate to the Comptroller-General; and the property of such railroad companies shall be subject to taxation in each and every county through which the same passes to the same extent and in the same manner that all other property is taxed, in the manner hereafter set out.

SEC. III. *Be it further enacted by the authority aforesaid*, That whenever such certificate is received by the Comptroller-General, it shall be his duty to proceed to assess the amount of each and every railroad company's property, in each and every of said counties, in the following manner: First, it shall be assessed upon the property located in each county upon the basis of the value given by the returns required by section first of this Act; second, the amount of tax to be assessed upon the rolling stock and other personal property, is as follows: As the value of the property located in the particular

county is to the value of the whole property, real and personal, of the said company, such shall be amount of rolling stock and other personal property, to be distributed for taxing purposes to each county. These two, the value of the property located in the county and the share of the rolling stock and personal property thus ascertained, and apportioned to each of such counties, shall be the amount to be taxed to the extent of the assessment in each county.

SEC. IV. *Be it further enacted*, That should the property of any railroad company in this State be not subject to taxation, as hereinbefore provided, but taxable upon its net income, such railroad company shall report to the Comptroller-General the entire length of its road, the different counties through which such road runs, and the number of miles in each county, which report shall be made at the time that railroad companies are required to return their property for taxation. When the income of such road is returned to the Comptroller-General he shall estimate the amount of income for each county through which such road runs, upon which shall be levied for such county a tax to be ascertained in the following manner: In the proportion that the road in each county bears to the whole length of the road, in that proportion shall the income returned by said road be taxed by each county through which it passes. Such income shall be taxed at the rate fixed by the charter of such railroad company, which tax shall be assessed and collected by the Comptroller-General, and by him paid over to the county entitled to such tax. If any railroad company refuses to pay such tax the Comptroller shall issue execution for the amount of said tax due to each county, which shall be levied on any property of said company. The railroad company may resist such tax as is herein provided in case of tax on property of railroad companies.

SEC. V. *Be it further enacted by the authority aforesaid*, That whenever the Comptroller-General shall ascertain and levy in the manner specified in the preceding section, the amount of tax due by such company to each of such counties, it shall be his duty at once to notify the President and Treasurer of such railroad company of the amount due in each of said counties for county taxes of said railroads, and each and every road is hereby required, within sixty days from the receipt of such notice, to pay to the Tax Collector of each county

through which the railroad runs the amount mentioned by the Comptroller-General as the tax due to such county.

SEC. VI. *Be it further enacted by the authority aforesaid*, If any railroad company shall refuse to pay, within sixty days, the amount thus ascertained and due by it to the Tax Collector of any county to which the same is due and payable, it shall be the duty of the Comptroller-General to at once issue a *fi. fa.* in the name of the State of Georgia against such railroad company for the same; to be issued, levied and returned in the same manner as tax *fi. fas.* are issued for State taxes due in the State by said Companies.

SEC. VII. *Be it further enacted by the authority aforesaid*, If any railroad company shall dispute the liability to such county tax, it may be done by an affidavit of illegality, to be made by the President of said railroad in the same manner as other affidavits of illegality are made, and shall be returned for trial to the Superior Court of the county of Fulton, where such cases shall be given precedence for trial over all other cases, except tax cases, in which the State shall be a party.

SEC. 8. *Be it further enacted by the authority aforesaid*, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Approved October 16, 1889.

The Railway Company made return of its property for the year 1890 in the manner and within the time prescribed by the Act. Upon the basis of such returns, the defendant in error, William A. Wright, as comptroller-general of the State, assessed and levied taxes for the benefit of the several counties concerned, as directed by the Act; and, under date of October 27, 1890, notified the Company that such taxes so levied must be paid to the respective tax collectors of the several counties named within sixty days from the date of such notice.

Record, p.p. 9 and 10.

The value of the property thus assessed to each county, the respective tax rates levied, and the amounts of the taxes so to be paid, were stated in the notice to be as follows:

Muscogee County—Value assessed, $83,783; tax rate, 2½ mills; amount taxed, $209.45.

Chattahoochee County—Value assessed, $136,968; tax rate, 8 mills; amount of tax, $1,095.74.

Stewart County—Value assessed, $114,512; tax rate, 5 mills; amount of tax, $472.76.

Webster County—Value assessed, $60,065; tax rate 3.47 mills; amount of tax, $208.60.

Terrell County—Value assessed, $28,069; tax rate, 5.34 mills; amount of tax, $141.46.

Record, p. 12.

Before the expiration of the sixty days limited within which to make such payments, the Railway Company, in conformity with the system of pleading and practice obtaining in said State, exhibited its equitable petition in the superior court of Fulton county, against the said William A. Wright, for injunction and relief. In this petition it was averred that unless restrained by the court the said Wright, as comptroller-general, would, within sixty days from the date of said notice (that is to say on December 27, 1890,) issue executions for the collection of said taxes and enforce the same by levy upon and sale of the Company's property; that said Act of 1889, under color of which said taxes were assessed and levied, was illegal, unconstitutional and void upon the grounds and in the particulars as follows, to wit:

First: It offends paragraph I., section II., of article VII. of the constitution of the State of Georgia, which provides: "All taxation shall be uniform upon the same class of subjects and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" that the taxes levied under color of said act are not uniform upon the same class of subjects, because (1) section 3 of the Act prescribes a method of assessment for taxation based upon property value as to certain railroads, while section 4 prescribes a method of assessment based upon net income as to certain other railroads; (2) certain railroads are assessed for taxation, for the benefit of the several counties, upon their personal property, wherever located, in the proportion as the value of the property in the particular county bears to the whole property, real and personal, of said companies, while other railroads are assessed

therefore, violative of section I., article VII. of the constitution of the State of Georgia.

III. The Act of 1889 embraces two subjects-matter, in that it provides for a tax upon the property of certain railroad companies, which is one subject-matter, and also for a tax upon the net income of certain other railroad companies, which is another subject matter, and is thus violative of paragraph VIII., section VII., article III. of the constitution of the State of Georgia."

In said amended petition it was averred that unless the equitable relief prayed be granted, a fi. fa. will be issued by the comptroller-general for the amount of the tax claimed to be due and payable, which fi. fa. will be a cloud upon the title of the Railway Company's real estate; and that a multiplicity of suits will ensue, in that under the terms of the statute an affidavit of illegality is required to be filed by the Railway Company to the levy of the sheriff of each of the counties through which its railway runs, thus creating a multiplicity of suits involving complex questions and conflicting rights. The prayers of the original petition were adopted, and it was further prayed that said Act be decreed unconstitutional and void for the reasons and upon the grounds stated in the amended petition.

Record, p.p. 13 and 14 (Amended Petition.)

To this original and amended petition the defendant Wright filed his general demurrer ugon the following grounds:

1. That no sufficient cause or ground for the relief therein prayed, or for any other relief, was set forth in the petition.

2. That no sufficient ground or grounds at law or in equity for the relief prayed was set forth in the petition as amended.

3. That there is no equity in the petition.

Record, p. 15.

The cause came on to be heard, on this general demurrer, in the superior court of Fulton county, on May 30, 1891, and was argued by counsel and briefs submitted. The court took the case under advisement, and reserved his decision until August 29, 1891, when he rendered judgment sustaining

the demurrer. His reasons therefor were given at large in a written opinion, wherein, among other things, he recognized the Federal question involved, and sustained the validity of the Act of 1889 upon the ground that it was not repugnant to the Fourteenth Amendment.

Record, p.p. 16 to 21.

To this judgment of the court the Railway Company excepted, and obtained a writ of error transferring the cause for review to the supreme court of the State.

Record, p.p. 7 and 8.

The case was twice argued in the supreme court of the State (a re-argument having been ordered by the court), and on April 19, 1892, the court filed its written opinion sustaining the validity of the Act of 1889 as not being repugnant to either State or Federal Constitutions, and rendered final judgment affirming the judgment of the court below.

Record, p. 22 (Order for Re-argument); p.p. 23 to 38 (Judgment and Opinion of the Court.)

The case is reported in 89 Ga. 574.

To review this judgment, a writ of error was duly allowed, and the cause thereupon transferred to this Court.

Record, p.p. 1 to 5.

II.—ASSIGNMENT OF ERRORS.

The error assigned is that the supreme court of the State of Georgia erred in adjudging and deciding that the Act of October 16, 1889, was not repugnant to that clause of the first section of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Record, p.p. 6 and 7.

III.—BRIEF OF THE ARGUMENT.

I.

It is contended that the Act of October 16, 1889, denies to the plaintiff in error the equal protection of the laws, in that it denies to railway companies the equal enjoyment of rights, privileges and immunities with respect to the taxation of property which are guaranteed by the constitution of Georgia to all owners of property subject to be taxed.

Whether the Act complained of does deny to the plaintiff in error such equal protection is a Federal question, reviewable in this Court on writ of error to the highest court of the State.

The last clause of the first section of the Fourteenth Amendment was designed to protect all persons within a State in the equal enjoyment of rights established or recognized by law. Of itself it creates no rights other than security of immunity from inequality of legal protection.

Strauder *v.* West Virginia, 100 U. S. 303.
Civil Rights Cases, 109 U. S. 3.

All of the legal rights of any person within a State may be grouped into three classes:

1. Such as arise under the Federal Constitution and laws.

2. Such as are in their nature fundamental and belong of right to citizens of all free governments.

3. Such as arise under the constitution and laws of the particular State.

Rights arising under the Federal Constitution and laws were fully secured before the adoption of the Amendment; any action on the part of the State impairing their enjoyment would have been simply void as in conflict with the paramount law. This clause of the Amendment could not have been designed to forbid the State to deny to all persons within its

jurisdiction the equal protection of the Federal laws; for such a purpose it would have been "a vain and idle enactment, which accomplished nothing."

The fundamental rights of citizens may all be comprehended in the right to the enjoyment of life, liberty and property, without undue interference. Corfield *v.* Coryell, 4 Wash. (C. C.) 380; Slaughter House Cases, 16 Wall. 36. Prior to the Amendment, if a State chose to deprive any person of either without due process of law, the injured person was without redress. To provide a sure defense for the protection of this class of rights it was declared that no State should deprive any person of life, liberty or property without due process of law. In re Kemler, 136 U. S. 436.

Thus Federal rights and the natural rights of citizens being fully secured, the Amendment would have stopped here had nothing more been designed. It was perceived, however, that another class of no less valuable rights remained for Federal protection. The State might, under forms of law and without violating due process, indulge in partial and discriminating legislation operating harshly upon some persons and unduly favoring others under the same circumstances and conditions; or so administer the laws as to afford to some immunities which were denied to others equally entitled. To secure to every person equality of legal protection in the enjoyment of rights, privileges and immunities arising out of or under State laws, was perhaps the leading purpose of the Amendment, as read in light of the history of the times.

Slaughter House Cases, 16 Wall. 36.

Strauder *v.* West Virginia, 100 U. S. 303.

Virginia *v.* Reeves, 100 U. S. 313.

Ex parte Virginia, 100 U. S. 339.

United States *v.* Cruikshank, 92 U. S. 542.

A State may violate this equality of protection by legislation denying to some the equal enjoyment of immunities and exemptions guaranteed by the organic law to all persons of a particular class, or to the whole body of persons within the State.

Equality of protection implies equal exemption with others

in like condition from charges and burdens of every kind. Discriminating and partial legislation is prohibited; all persons and property must be treated alike under the same circumstances and conditions. Equal protection of the laws is a pledge of the protection of equal laws.

Minneapolis & St. Louis R. Co. *v.* Beckwith, 129 U. S. 26.
Barbier *v.* Connally, 113 U. S. 27.
Soon Hing *v.* Crowley, 115 U. S. 703.
Missouri Pacific R. Co. *v.* Humes, 115 U. S. 512.
Yick Wo *v.* Hopkins, 118 U. S. 356.
Missouri Pacific R. Co. *v.* Mackey, 127 U. S. 205.
Strauder *v.* West Virginia, 100 U. S. 303.
Ex parte Virginia, 100 U. S. 339.
Missouri *v.* Lewis, 101 U. S. 22.
Civil Rights Cases, 109 U S. 3.
Phila. Fire Asso. *v.* New York, 119 U. S. 110.
Hayes *v.* Missouri, 120 U. S. 68.
Minneapolis & St. L. R. Co. *v.* Herrick, 126 U. S. 210.
Walston *v.* Nevin, 128 U. S. 578.
Dent *v.* West Virginia, 129 U. S. 114.
Bell's Gap R. Co. *v.* Pennsylvania, 134 U. S. 31.
Home Insurance Co. *v.* New York, 134 U. S. 594.

Originally designed for the peculiar protection of a then recently emancipated and inferior race, the principle of this clause of the Amendment has been extended so as to include all persons, both natural and artificial, without reference to age, sex, race or condition. Corporations are persons within its meaning, and may invoke its protection.

Santa Clara County *v.* Southern Pac. R. Co. 118 U. S. 394.
Pembina C. S. Min. & Mill Co. *v.* Pennsylvania, 125 U. S. 394.
Missouri Pac. R. Co. *v.* Mackey, 127 U. S. 205.
Minneapolis & St. L. R. Co. *v.* Beckwith, 129 U. S. 26.
Home Ins. Co. *v.* New York, 134 U. S. 594.
Charlotte, C. & A. R. Co. *v.* Gibbes, 142 U. S. 386.

Our contention is that certain rights, privileges and immunities with respect to the taxation of property are conferred

by the constitution of Georgia upon all owners of all property subject to be taxed within the State, thereby creating *an indivisible class* of persons composed of all the owners of such property; that the legislature is incompetent to subdivide and classify property for purposes of taxation with reference to use and ownership; that the Act complained of seeks to do this, to our injury, subjects us to burdens in this regard not imposed upon other owners of property within the State, and denies to us immunities. arising under the constitution, which are enjoyed by others of the class of property owners.

The following hypothetical case may serve to illustrate the proposition: The constitution of Georgia provides that the right of trial by jury in common law cases (other than actions on unconditional contracts in writing where no issuable defense on oath is filed) shall remain inviolate. The right is thus conferred upon the whole body of persons within the State. Suppose the legislature should, by statute, declare that in actions against railway companies for injuries to person or property the right should not be exercised unless the amount involved exceeded $1,000; thereby impairing the enjoyment of the right as to railway companies, while leaving it unrestricted as to all other persons. Can it be doubted that in such a case a Federal question would be involved? And if the courts of the State should sustain the constitutional validity of the statute, would not such judgment be subject to review in this Court on writ of error?

A similar question has been decided by this Court in the case of Strauder *v.* West Virginia, 100 U. S. 303. The constitution of West Virginia guaranteed to all persons accused of crime the right of trial by jury. A statute of the State, regulating the composition of juries, limited the selection of jurors to white male citizens, thereby excluding all persons of color, because of their race or color. The constitutional validity of this statute was drawn in question, and this Court, on writ of error to the supreme court of the State, held that it was repugnant to the Fourteenth Amendment, in that it denied to colored men the equal enjoyment of a right or immunity guaranteed by the constitution of the State to the whole body of persons within the State when accused of crime.

Mr. Justice Strong, delivering the opinion of the Court, said: "If the defendant has a right to have a jury selected for the trial of his case without discrimination against all persons of his race or color, because of their race or color, the right, if not created, is protected by those Amendments and the legislation of Congress under them." Regarding the right, he says: "The right to a trial by jury is guaranteed to every citizen of West Virginia by the constitution of that State, and the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure." On the question of equal protection he continues: "By their manumission and citizenship the colored race became entitled to the equal protection of the laws of the State in which they resided." * * * * *

The principle, as we understand it, upon which this decision proceeds, is that the constitution of West Virginia having guaranteed to all persons the right of trial by an impartial jury in criminal cases, a class was thereby established, composed of the whole body of persons within the State, upon whom, as a class, was conferred such right or immunity; that such class was incapable of subdivision with respect to the enjoyment of this right, by reference to race or color; and that a statute which sought to restrict its enjoyment as to colored men, because of their race or color, discriminated against them, and was a denial of the equal protection of the laws.

The statute complained of denied to the defendant the equal enjoyment of a right resting solely upon the constitution of the State. Trial by jury, while an ancient institution of the common law, is not essential to due process of law, nor is it a right secured by the Constitution of the United States to persons accused of crime in the State courts, unless demanded by the laws of the State.

Edwards *v.* Elliott, 21 Wall. 532.
Pearson *v.* Yewdall, 95 U. S. 294.
Walker *v.* Sauvinet, 92 U. S. 92.
Kennard *v.* Louisiana, 92 U. S. 480.
Hurtado *v.* California, 110 U. S. 516.
Spies *v.* Illinois, 123 U. S. 131.
Brooks *v.* Missouri, 124 U. S. 394.
Baldwin *v.* Kansas, 129 U. S. 56.
McNulty *v.* California, 149 U. S. 645.

The mere construction of a State statute, in a case not involving any question re-examinable under the twenty-fifth section of the judiciary act, is within the province of the State court.

Mobley *v.* Lake Shore & M. R. Co., 146 U. S. 162.
Stryker *v.* Goodnow, 123 U. S. 527.
Louisiana *v.* Pillsbury, 105 U. S. 294.
Glenn *v.* Garth, 147 U. S. 360.

Whether the statute so construed denies to the person complaining equality of legal protection, is a Federal question.

Chicago, M. & St. P. R. Co. *v.* Minnesota, 134 U. S. 418.

When a Federal question is involved, this Court will exercise its independent judgment in all matters appropriate to a correct decision of the case; and to this end may declare that a statute of the State denies to the person complaining the equal enjoyment of right and immunities guaranteed by the State constitution to all members of the particular class. Otherwise the right of review would be a shadow without substance.

Yick Wo *v.* Hopkins, 118 U. S. 356.
Butz *v.* Muscatine, 8 Wall. 575.
Jefferson Bank *v.* Skelly, 1 Black. 436.
Wright *v.* Nagle, 101 U. S. 791.
Strauder *v.* West Virginia, 100 U. S. 303.
Martin *v.* Hunter, 1 Wheat. 304.
Kentucky Railroad Tax Cases, 115 U. S. 321.
Gormley *v.* Clark, 134 U. S. 338.
Carpenter *v.* Strange, 141 U. S. 87.
Stutsman County *v.* Wallace, 142 U. S. 293.
Huntington *v.* Attrill, 146 U. S. 657.
Northwestern Univ. *v.* People, 99 U. S. 309.
Williams *v.* Louisiana, 103 U. S. 637.
Durkee *v.* Board of Liquidation, 103 U. S. 646.
Home Ins. Co., *v.* Augusta, 93 U. S. 116.
Hayes *v.* Missouri, 120 U. S. 68.
Kirtland *v.* Hotchkiss, 100 U. S. 491.
Bohanan *v.* Nebraska, 118 U. S. 231.
Neal *v.* Delaware, 103 U. S. 370.
Trebilcock *v.* Wilson, 12 Wall. 687.
McGuire *v.* Massachusetts, 3 Wall. 382.

In the case of Charlotte, Columbia & Augusta Railroad Co.,

v. Gibbes, 142 U. S. 386, the question seems to have been recognized and decided by the court, though not presented nor argued by counsel.

II.

The constitution of Georgia establishes for purposes of taxation one single, indivisible class of persons, composed of all owners of all property subject to be taxed within the taxing district. All taxation upon property is required to be by the same unvarying standard of absolute equality, both as to the rate and the mode of assessment, and must be levied and collected under general laws.

Paragraph I., section II., article VII. of the constitution of Georgia declares:

"All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

The classification of subjects contemplated has reference to all subjects of taxation, other than property. As to such subjects, the uniformity rule is satisfied if the tax extends equally to all members of the particular class taxed.

In the Mayor, etc., of Savannah *v.* Weed, 84 Ga. 683, Mr. Justice Simmons, delivering the opinion of the court, says: "We think this clause refers to subjects of taxation other than property, and means that if one kind of business, privilege, right, etc, is taxed, the tax shall be uniform upon all of that class."

Weaver *v.* State, 89 Ga. 639.

Singer Manfg. Co. *v.* Wright, 33 Fed. Rep. 124.

Cuttliff *v.* Mayor, etc., of Albany, 60 Ga. 599.

Property, however, is treated as *one indivisible subject of taxation*, and all of it, except that exempted by the constitution, must be taxed alike—equally, uniformly and according to value. The legislature is incompetent to classify it with reference to species, use, ownership, or any other standard.

In Verdery *v.* The Village of Summerville, 82 Ga. 138, a municipal ordinance imposed an *ad valorem* tax on real estate only, leaving untaxed all other species of property. The

learned Chief Justice speaking for the supreme court of Georgia says:

"Is an ordinance which taxes real estate alone constitutional? Possibly, under the constitution of 1868, taxable property could be classified by species, and each species taxed at a different rate from that imposed on another species. * * * The clause now of force is in these words: 'All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.' Here property subject to be taxed, the whole of it together, and not as cut or divided into species, is treated as one subject-matter of taxation; and this immediately follows the declaration that all taxes shall be uniform upon the same class of subjects. *Property subject to be taxed is treated as one single class*, and the only division of it contemplated or allowable, is by territorial lines, coinciding with the territorial limits of the various authorities by which the taxes upon it are levied. There cannot be this rate on one species of property and that on another, though there can be different rates for different cities or villages on all taxable property whatsoever. * * *

"Once for all, the constitution has enumerated the two classes of property, which enumeration the legislature, the courts and the citizen must recognize as exhaustive; property, whatever its species, is simply exempt or subject to be taxed. If exempt, it pays nothing; if subject, the amount it shall pay is measured by multiplying the fixed rate into the actual value. The result will be, in every instance, that all persons who own taxable property of equal value will pay the same amount of taxes, and all who own more than others will pay more, and all who own less will pay less."

So in The Mayor, etc., of Savannah *v.* Weed, 84 Ga. 683, Mr. Justice Simmons says:

"When, however, they come to deal with property, a different rule prevails. If property is taxed, all of it must be taxed except that exempted in the constitution. The legislature or municipal authorities can make no exemption as to property; it must be taxed, and taxed according to its value. Though property is a subject of taxation, *the constitution treats it as but one subject*, and prescribes the rule of uniformity as to it

by saying that all of it subject to be taxed shall be taxed *ad valorem*. And if it must be taxed, and taxed according to its value, we cannot see how it can be classified anew, and one rate put upon real estate, a lower rate upon personal property generally, and a still lower rate upon shares in banks and banking associations. If one man has a thousand dollars worth of personal property, and another a thousand dollars worth of real estate, and another a thousand dollars worth of shares in a banking company, it must bear the same rate of taxation. Each must bear the same burden in support of the government which protects the owner and his property."

These authorities put forever at rest the true meaning of this clause of the constitution, and establish beyond controversy the following propositions:

First: That all owners of all property subject to be taxed within the taxing district, *constitute one indivisible class of persons;*

Second: To this class is guaranteed the right or immunity that all taxation upon property shall be equal, uniform and according to value; and

Third: That all such taxation shall be levied and collected under general laws.

If these propositions are true, then any legislation which seeks to further classify property for purposes of taxation, or which levies a tax that does not operate uniformly upon all members of the class, or imposes a tax not levied and collected under general laws, is class legislation, which denies to the person discriminated against the equal protection of the laws.

The Act of 1889 offends all of the inhibitions enumerated:

It seeks to classify property for purposes of taxation with reference to use and ownership;

It prescribes a tax upon the property of railway companies which is not equal and uniform with that imposed upon all other persons and property composing the constitutional class;

It levies and provides for the collection of the tax under a special law.

I. That it classifies property with reference to use and ownership is apparent from a reading of the Act.

Its title declares the Act designed "to provide a system of taxation of *railroad property* in each of the counties of this State," etc.

The Act provides for annual returns of the property of railway companies (section I.), prescribes a rule for the assessment and distribution of values (section II.), and provides for the enforcement of collection (sections V., VI. and VII.), all according to methods applied exclusively to the property of railway companies.

The system of taxation provided by the Act, as construed by the supreme court of Georgia, is as follows:

The first section provides that each railroad company in the State shall make an annual return of its property to the comptroller-general of the State. This return shall be under the oath of the president, or other chief executive officer, and shall show, (1) the aggregate value of the whole property of the company; (2) the value of the real estate and track bed; (3) the value of the rolling stock and all other personal property, separately valued; and (4) the value of the (located) property in each county through which the railroad runs.

Record, p. 29.

The second section provides that the ordinary of each county through which the railroads run shall certify to the comptroller-general the tax rate for the current year, as levied by the local authority for county taxation, and that the property of the railroad company shall be subject to taxation in such county "to the same extent and in the same manner as all other property is taxed, *in the manner hereafter set out.*" The supreme court puts no construction upon this section, but says it "is plain and easily understood."

Record, p. 29.

The third section declares that upon receipt of such certificate from the ordinary, the comptroller-general shall assess the amount of the company's property in each county in the following manner: (1) Upon the property located in each county upon the basis of the value given by the returns required by the first section; (2) "the amount of tax to be assessed upon the rolling stock and other personal property, is as follows: As the value of the property located in the particular county is to the value of the whole (located) property, real and personal, of the said company, such shall be the amount of rolling

stock and other (unlocated) personal property, to be distributed for taxing purposes to each county," which shall be taxed, together with the located property in such county, to the extent of the assessment in each county. The State supreme court held that this section should be construed to mean that the word "other" in the sentence "rolling stock and other personal property" refers to other *than located* personal property. This meaning is given by inserting the word "unlocated," as above. "The *unlocated property* of the road, therefore, is to be distributed in just proportion to the portions of *located property* (real and personal) situated in the several counties."

Record, p.p. 33, 31.

The court also held that the second term of the proportion, to wit: "The value of the whole property, real and personal, of said company," should be construed to have the meaning it would have if the word "located" were inserted after the word "whole."

Record, p. 31.

The fourth section, providing for taxation upon the net incomes of such railroad companies as may be taxable for county purposes thereon, but not so taxable on their property, was construed by the court to be inoperative; and it was held that the Act should be treated as if it did not contain this section.

Record, p. 28.

The fifth section provides that whenever such tax shall be ascertained and levied; the comptroler-general shall notify the president and treasurer of the railway company of the amount due in each county for such county taxes; and requires the company to make payment of such amounts to the respective tax collectors of the several counties within sixty days after receipt of such notice.

Section six directs that, unless such amounts are so paid, the comptroller-general shall at once issue execution in the name of the State against such defaulting company, "to be issued,

levied and returned in the same manner as tax fi. fas. are issued for State taxes due in the State by said companies."

Section seven provides that the company may dispute the liability to such county tax by an affidavit of illegality, which shall be returned to the superior court of Fulton county, and be given precedence for trial over all other cases, except tax cases in which the State shall be a party.

The Act is printed in full on pages 2-4 of the statement in this brief.

The system established by general law for county taxation of the property of natural persons, is as follows:

Return of all property is required to be made under oath to the tax receiver of the county of the residence of the owner, or to the tax receiver of the county in which the property may be actually located, to be there taxed. Intangible personal property, having no actual situs, follows the domicile of its owner, and is to be there taxed. City Council of Augusta *v.* Dunbar, 50 Ga. 387. The tax assessed must be paid by December 20th, in each year, to the tax collector of the county entitled. In default of such payment he issues execution. Code, section 886. Acts of 1884-5, p. 67, section 2. Acts of 1888, p. 28, section 13.

Record, p. 20, side page 38.

Corporations generally are taxed after the same method. Section VII. of the general tax act for 1889 and 1890, approved December 26, 1888, found on page 24 of the published laws of that year, declares:

"That the presidents of all manufacturing and other incorporated companies (or their agents), other than railroad, insurance, telegraph, telephone, express, sleeping and palace car companies, shall be required to return all their property whatever of their respective companies at its true market value to the tax receiver of the county where the same is located, *or where the principal business of each company is located*, to be taxed for State *and county purposes*, as other property in this State is taxed."

Section fourteen of the same act (pages 28-29, published laws,) provides that *any person or company*, resident of the State, owning any vessel, boat or water craft, not taxed under sec-

tion seven of the act, "shall answer under oath the number of vessels, boats, and other water crafts owned by him, and the value of each, and make a return of the same to the *tax receiver of the county of the residence of such person or company*, and the same shall be taxed as other property is taxed."

The exemption of the classes of corporations named from the operation of section seven of the act, has reference only to taxation for State purposes.

At that time none of the property of any of the corporations named was taxed for county purposes, other than according to the method applied for the taxation of the property of other corporations and of natural persons. Since then the Act of 1889, of which we complain, has made a single exception in the matter of taxation for county benefit, as to the property of railway companies.

II. The tax is not uniform with that imposed by the general law upon other property subject to be taxed.

The rule that taxation shall be uniform and *ad valorem*, means that all property subject to be taxed must be taxed by one and the same unvarying standard, equally with other property, and co-extensively with the territory to which it applies. Uniformity in the mode of assessment upon the taxable valuation, as well as in the rate of taxation, is demanded.

Gilman *v.* The City of Sheboygan, 2 Black, 510.
Exchange Bank *v.* Hines, 3 Ohio St. 15.
Knowlton *v.* Rock County, 9 Wis. 410.
Puitt *v.* Commissioners, 94 N. C. 709.
Pike *v.* State, 5 Ark. 204.
Verdery *v.* The Village of Summerville, 82 Ga. 138.
The Mayor, etc., of Savannah *v.* Weed, 84 Ga. 683.
Railroad Tax Cases, 13 Fed. Rep. 732.
Cumming *v.* National Bank, 101 U. S. 153.

The taxation upon the property of railway companies, prescribed by the Act of 1889, is not *ad valorem* and uniform with that imposed by the general law upon the property of other corporations and of natural persons, under the same circumstances and conditions, in the following particulars:

First: A species of personal property, to wit, rolling stock, owned by railway companies is distributed for taxing purposes

to and for the benefit of the several counties traversed by the particular railway, while all personal property of all other persons is taxed in and by the county in which the owner resides or in which such personal property has an actual situs.

Second: The "unlocated" intangible personal property of railway companies is distributed for taxing purposes to the several counties, while the intangible property of all other persons follows the domicile of its owner, and is there taxable.

1.—*As to Rolling Stock:*

In those States where property may be classified for purposes of taxation, or in which the property of corporations may be taxed differently from that of other persons, the system of distribution of values is unobjectionable. Thus in State Railroad Tax Cases, 92 U. S. 618, the constitution of Illinois, while requiring that taxation in general should be uniform and equal, declares in express terms that corporations owning franchises and privileges may be taxed as the legislature shall determine by general law, uniform as to the class upon which it operates. So in Kentucky Railroad Tax Cases, 115 U. S. 321, there was nothing under the constitution of Kentucky forbidding the classification of property for purposes of taxation, and the valuation of different classes by different methods.

In all the States where such a system has been upheld, it will be found that it was authorized by the State constitution.

In Georgia, on the contrary, the constitution expressly forbids the classification of property, and demands that the rule of absolute uniformity shall extend to all property subject to be taxed.

It appears that the rates of taxation for the year 1890 obtaining in the several counties traversed by the Columbus Southern Railway varied largely, and that all were higher than the rate in Muscogee, the county of our domicile. These rates were: In Muscogee county, 2½ mills; Chattahoochee county, 8 mills; Stewart county, 5 mills; Webster county, 3.47 mills; Terrell county, 5.34 mills.

Record, p. 12.

Thus the average rate is 5.26 mills, more than double the rate of the county of our domicile. That we are prejudiced by such distribution, is apparent without argument.

In reply to this, the supreme court of the State says that rolling stock, being transitory in its character, may be considered as belonging as much in one county as another, and that the railway company may be said to reside *sub modo* in all the counties along the line of its road.

Record, p. 33 (bottom), p. 35 (near bottom).

Our answer is that the transitory property of other persons is taxable in the county of the residence of the owner; that our residence and principal office is fixed by our charter in the city of Columbus, Muscogee county (Record, p. 9 [1]); that the residence of all other corporations within the State is treated for purposes of taxation as being in the county in which is located their respective principal offices (General Tax Act, 1888, Sec 7, p. 24); that to apply a rule of this kind as to one class of corporations only, with respect to taxation upon property, affects both the mode of assessment and the rate, and is class legislation of the offensive kind.

Vessels, boats and water crafts operated by navigation companies constitute a species of "unlocated" personal property, closely resembling the rolling stock of railway companies. Both are treated as personal property for purposes of taxation by the general law. Section 2 of the Act of October 20, 1885, (page 30 of the published laws) is as follows:

"That personal property shall be construed, for purposes of taxation, to include all goods, chattels, moneys, credits and effects, whatsoever they may be, all ships, boats and vessels belonging to the inhabitants of this State, whether at home or abroad, and all capital invested therein; all money within or without the State due the person to be taxed; all stocks and securities, whether in corporations within this State or in other States, owned by citizens of this State, unless exempt by the laws of the United States or of this State."

This "unlocated" personal property, used by the navigation company, a common carrier, in the conduct of its business, and, when applied to internal navigation, moving according to a fixed route from county to county, in each of which the company may have landings and located property, is taxed by the

general law in and by the county of the domicile of the company, as fixed by its charter.

General Tax Act of 1888, section 7.
Page 22 of this Brief.

The "unlocated" personalty of the Railway Company—likewise a common carrier—traversing various counties according to a fixed route, is distributed for purposes of taxation to the several such counties.

The illustration is apt because practically true. The several navigation companies whose domiciles are in the city of Columbus, and whose boats ply the Chattahoochee river, are taxable on the vehicles of their trade at the low rate obtaining in Muscogee county, while The Columbus Southern Railway Company, similarly situated, is taxed on its vehicles at an average of more than double the rate. Both are treated by the constitution of the State as members of a single indivisible class, to wit, owners of taxable property; according to the legislative scheme, one is required to pay double as much in taxes on property of equal value, similarly situated, as is the other.

2.—*As to other "Unlocated" Personal Property:*

The construction put upon the Act by the State supreme court divides the property of railway companies into located and unlocated; and the unlocated property into (1) rolling stock and other (tangible) transitory personalty, and (2) non-transitory (intangible) personalty. This intangible personalty may consist of money, stocks, bonds, notes and other choses in action. The distribution of this class of property for taxing purposes seems as much without reason as it certainly is without precedent. It has never been attempted in any other scheme of taxation or in any other State, so far as we are aware.

All of the reasons above given against the distribution of rolling stock, apply with even greater force against this scheme of distribution.

The Columbus & Gulf Navigation Company, a corporation with its domicile and principal office in the city of Columbus, has, on April 1st, 1890, $50,000 in cash, notes, accounts and securities in its treasury in Muscogee county. The Columbus

Southern Railway Company has a like amount of like property in its treasury. The former pays in taxes thereon the sum of $125.00. The latter pays $275.00.

III. The tax is levied and collected under a special law.

Public statutes are either general and local, or general and special, depending upon whether the classification refers to territory or to subject-matter. An act will be general as to territory if it have operation throughout the State, although it may be special as to subject-matter, if it deals with less than all the members of any class. On the other hand, an act may be general as to subject-matter, but local as to territory.

Mortgage Co. *v.* School District, 19 Fed. Rep. 359.

The constitution does not forbid local tax laws, provided they are general as to subject-matter.

Verdery *v.* The Village of Summerville, 82 Ga. 139, 141.

It is those which are special in this regard that are forbidden.

A law imposing specific taxes on occupations is not a special law, for the reason that the legislature is legally competent to classify these subjects of taxation as it thinks proper, without judicial restraint.

Property, however, is but one subject of taxation; the legislature is not competent to classify it, except by territorial lines for purposes of municipal taxation. Hence, a law providing for the levying and collecting of a tax upon the property of a particular class only, is special as to subject-matter, and as such offensive to the constitution.

In Verdery *v.* The Village of Summerville, supra., Chief Justice Bleckley says, on page 141 of the opinion:

"By leaving out personalty, not only is the principle of uniformity, as well as the express requirements for the inclusion of all property subject to be taxed, violated, but the omission narrows the ordinance into a particular or special law, whereas the constitution declares that all taxes shall be levied and collected under general laws. There is a relative sense in which a mere local law can, with intelligible meaning, be called a law of general obligation. If it acts upon the whole municipal area and upon all persons and property therein, with the same comprehensive generality as it would act throughout the

State were it applicable to the State at large, it is a law of general though local operation. This generality as to territory, with full generality as to subject matter, that is, that the tax shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the given territory, is the generality which is needful."

So in the case of The Atlanta and Florida Railroad Company *v.* Wright, 87 Ga. 487, an act which required railway companies to make payment of State taxes by October 1st, while the mass of tax payers are exempt until December 20th, and which imposed a pecuniary penalty for non-payment of such taxes by railway companies, leaving all other classes exempt from any penalty, was declared a special law on both grounds, and as such offensive to the constitntional inhibition.

If the view taken by the State court that the *levying* of the tax consists solely in prescribing the *rate*, which is in all cases fixed by the particular county and is the same upon all property subject to be taxed therein, is correct, then perhaps it may be said that the tax is levied under general laws.

In so far, however, as the *assessment* of the taxable value and the *collection* of the tax are concerned, the Act is certainly special:

1.—*As to the Assessment.*

In the case of railway companies returns are required to be made to the comptroller-general, who assesses the tax after a peculiar method of distribution of values of rolling stock and other unlocated personal property. Other corporations and natural persons make returns to the tax receiver of the county of their residence, or of the county in which the property may have an actual situs, none of their personal property being subject to distribution. Thus is produced substantial non-uniformity, which renders the Act offensively special.

2.—*As to Collection.*

"Whenever" the tax has been ascertained and levied by the comptroller-general in the manner pointed out in the Act, he is required to give notice thereof to the officers of the railway company, which tax must be paid in sixty days from the receipt of such notice. The tax rate is levied by the ordin-

aries of the respective counties upon recommendation of "the grand juries at the *first* or *spring* term of their respective courts." Code of Georgia, section 509.

Section two of the Act of 1889 requires the ordinary to certify such rate to the comptroller-general "whenever" it is assessed by the county authority. "Whenever" in such connection is used in the sense of "so soon as." Section three of the act demands that "whenever," i. e., so soon as such certificate has been received by the comptroller-general, "it shall be his duty to proceed to assess the amount of" the railway company's property to be taxed. By section five "whenever," i. e., so soon as this shall be done, "it shall be his duty to notify" the officials of the company and require payment within sixty days.

It is clear that compliance with the law will result in requiring payment of the tax by railway companies long before December 20th, when other persons are required to make payment of their taxes. If this be so, then The Atlanta & Florida case, supra, is controlling.

It is true that in the case at bar this was not done, but the constitutionality of an act is to be tested not by what has been but by what may be done under its authority.

Stuart *v.* Palmer, 74 N. Y. 188.

If the tax be not paid within the time limited, it becomes the duty of the *comptroller-general* to issue fi. fas. in the name of the State against such delinquent railway companies, which fi. fas. shall be issued and returned in the same manner as are *State tax* fi. fas.; and should liability to the tax be disputed, the issue must be tried in the county in which is located the seat of government, and must be given precedence in time of trial.

If other persons fail to pay their county taxes by December 20, (Acts of 1884-5, p. 67, Acts of 1888, p. 28), fi. fas. are issued against them by the *tax collector* of the county, and any action or suit affecting such tax is tried in such particular county.

The Fourteenth Amendment does not of itself prohibi- special legislation; but when the organic law of the State guarantees immunity from taxation other than such as shall be levied and collected under general laws, a law special in this regard is class legislation, and as such offensive to the Amendment.

III.

Whether injunction is the proper remedy, is a question not raised in this case, nor would this Court concern itself therewith. That such is the established method of procedure in the State courts, to prevent the collection of an illegal tax, the following authorities will show:

The Southwestern Railroad *v.* Wright, 68 Ga. 311.
Wright *v.* The Southwestern Railroad, 64 Ga. 783.
Goldsmith *v.* The Georgia Railroad Co., 62 Ga 485, 495.
The Mayor, etc., of Columbus *v.* Flournoy, 65 Ga. 231.
Savannah, Florida and W. R'y Co. *v.* Morton, 71 Ga. 25.
Robson *v.* Du Bose, 79 Ga. 721.
The Mayor, etc., of Savannah *v.* DeLoney, 55 Ga. 33.
McCowan *v.* Davidson, 43 Ga. 480.
Wright *v.* The Central R. & B. Co., 85 Ga. 649.
Magruder *v.* The City Council of Augusta, 86 Ga. 220.
Code of Georgia, 1882, section 503.

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 753.

THE COLUMBUS SOUTHERN RAILWAY COMPANY,

PLAINTIFF IN ERROR,

VERSUS

WILLIAM A. WRIGHT,

COMPTROLLER-GENERAL OF THE STATE OF GEORGIA.

In Error to the Supreme Court of the State of Georgia.

Brief of CLIFFORD ANDERSON and J. M. TERRELL,
Counsel for Defendant in Error.

J. W. BURKE & CO., PRINTERS, MACON, GA.

Supreme Court of the United States

OCTOBER TERM, 1893.

No. 753.

THE COLUMBUS SOUTHERN RAILWAY COMPANY

vs.

W. A. WRIGHT, Comptroller-General of Georgia.

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

The plaintiff in error (The Columbus Southern Railway Company) filed a petition against W. A. Wright, Comptroller-General of Georgia, praying that he be perpetually enjoined from issuing any *fi. fas.* against said Company for the collection of taxes assessed under and by virtue of an Act of the Legislature of Georgia, approved October 16, 1889, "to provide a system of taxation of railroad property in each of the counties of (said) State through which said railroad runs," etc.

Said Railroad Company is a domestic corporation of said State, the road it owns and operates being located wholly therein. Said Railroad Company had no exemption from taxation under its charter or otherwise, and claimed none.

The said Act, the enforcement of which was thus sought to be enjoined, is as follows, to-wit:

"SECTION 1. *Be it enacted by the General Assembly of this State, etc.*, That hereafter in each and every year, on or before the first day of May, each and every Railroad Company in this State shall make an annual return to the Comptroller General of this State, for the purposes of county

taxation in each of the counties through which said road runs, in the following manner: Said return shall be under the oath of the President or other chief executive officer, and shall show the following facts as they existed on the first day of April preceding, to-wit: First, showing the aggregate value of the whole property of said Railroad Company; second, showing the value of the real estate and track bed of said company; third, showing the value of the rolling stock and all other personal property of said company; fourth, showing the value of the company's property in each county through which it runs.

"SECTION 2. *Be it further enacted, etc.*, That whenever the amount of the tax levy of any county through which the said railroad runs, is assessed by the authority of such county, it shall be the duty of the Ordinary thereof to certify the same and transmit such certificate to the Comptroller General; and the property of such Railroad Company shall be subject to taxation in each and every county through which the same passes to the same extent and in the same manner that all other property is taxed, in the manner hereafter set out.

"SECTION 3. *Be it further enacted, etc.*, That whenever such certificate is received by the Comptroller General, it shall be his duty to proceed to assess the amount of each and every Railroad Company's property in each and every of said counties, in the following manner: First, it shall be assessed upon the property located in each county upon the basis of the value given by the returns required by Section first of this Act; second, the amount of tax to be assessed upon the rolling stock and other personal property, is as follows: As the value of the property located in the particular county is to the value of the whole property, real and personal, of the said company, such shall be the amount of rolling stock and other personal property, to be distributed for taxing purposes to each county. These two, the value of the property located in the county and the share of the rolling stock and personal property thus ascertained and apportioned to each of such counties, shall be the amount to be taxed to the extent of the assessment in each county.

"SECTION 4. *Be it further enacted, etc.* That should the property of any Railroad Company in this State be not subject to taxation, as hereinbefore provided, but taxable upon its net income, such Railroad Company shall report to the Comptroller General the entire length of its road, the different counties through which such road runs, and the number of miles in each county, which report shall be made at the time that Railroad Companies are required to return their property for taxation. When the income of such road is returned to the Comptroller General he shall estimate the amount of income for each county through which such road

runs, upon which shall be levied for such county a tax to be ascertained in the following manner: In the proportion that the road in each county bears to the whole length of the road, in that proportion shall the income returned by said road be taxed by each county through which it passes. Such income shall be taxed at the rate fixed by the charter of such Railroad Company, which tax shall be assessed and collected by the Comptroller General, and by him paid over to the county entitled to such tax. If any Railroad Company refuses to pay such tax the Comptroller General shall issue execution for the amount of said tax due to each county, which shall be levied on any property of said company. The Railroad Company may resist such tax as is herein provided in case of tax on property of Railroad Companies.

"SECTION 5. *Be it further enacted, etc.*, That whenever the Comptroller-General shall ascertain and levy in the manner specified in the preceding Section, the amount of tax due by such company to each of such counties, it shall be his duty at once to notify the President and Treasurer of such Railroad Company of the amount due in each of said counties for county taxes of said railroads, and each and every road is hereby required, within sixty days from the receipt of such notice, to pay to the Tax Collector of each county through which the railroad runs the amount mentioned by the Comptroller-General as the tax due to such county.

"SECTION 6. *Be it further enacted, etc.*, If any Railroad Company shall refuse to pay, within sixty days, the amount thus ascertained and due by it, to the Tax Collector of any county to which the same is due and payable, it shall be the duty of the Comptroller-General to at once issue a *fi. fa.* in the name of the State of Georgia, against such railroad company for the same; to be issued, levied and returned in the same manner as tax *fi. fas.* are issued for State taxes due in the State by said companies.

"SECTION 7. *Be it further enacted, etc.*, If any Railroad Company shall dispute the liability to such county tax, it may be done by an affidavit of illegality, to be made by the President of said Railroad in the same manner as other affidavits of illegality are made, and shall be returned for trial to the Superior Court of the County of Fulton, where such cases shall be given precedence for trial over all other cases, except tax cases, in which the State shall be a party.

"SECTION 8. *Be it further enacted, etc.*, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed."

APPROVED October 16, 1889.

The injunction sought by said railway company was based on the allegations: First, That the said Act violates paragraph 1, Section 2, of Article 7 of the Constitution of said State, which provides:

"All taxation shall be uniform upon the same class of subjects and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

It was claimed that the taxes levied by the Comptroller-General under color of said Act are not uniform upon the same class of subjects:

(*a*). Because Section 3 prescribes a method of assessment, which is based upon the value of the property of certain railway companies in said State, while Section 4 prescribes a different method of assessment, based upon the net income of certain other railroad companies.

(*b*). Because said Act prescribed a different mode and time of assessment for taxation upon the property of railroad companies from that prescribed by the general law of the State for taxation upon the property of other corporations and of individuals, the latter being taxable for the benefit of counties on such of their property as lies within the territorial limits of the respective counties, whilst said Act requires the rolling stock and other personal property of railroad companies to be assessed for taxation for the benefit of the several counties through which said railroad runs, whether such personal property be within the territorial limits of the county for whose benefit it is taxed or not, under the method of prescribing the distribution of said personal property for taxation, which, it is claimed, is wanting in uniformity; and the time mentioned for making the returns and paying the taxes, differing from that prescribed for other tax payers.

Second, Because the taxes required to be assessed and collected as aforesaid under said Act not being uniform, the said Act, it is claimed, is obnoxious to that clause of the Fourteenth Amendment of the Constitution of the United States, which

declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Third, Because said Act is violative of paragraph 1, of Section 9 of Article 6 of the Constitution of said State, in requiring Railroad Companies, if they commence any proceedings to test the validity of said Act, to locate such proceedings in the Superior Court of Fulton County, without regard to the domicile of such Company. (This position, however, was abandoned in the argument before the State Supreme Court, as appears in the decision of that Court near the bottom of page 37 of the printed transcript of the record.)

By an amendment to the petition of said Railway Company, it was claimed that the uniformity clause of the State Constitution is further violated because said Act subjects the property of Railroad Companies to a rate of taxation which is not the same, but different in each of the counties, for the benefit of which the taxes are to be assessed and collected. The particular point raised by this objection is, that each county has a different rate of taxation for the property within its territory, and not that particular county prescribes a different rate of taxation for railroad property from that prescribed for the property of other taxpayers; that the taxes provided for by said Act are not authorized by Section 1, Article 7, of the Constitution of said State. The point here seems to be that Section 1 of Article 7 of the State Constitution, which mentions the different purposes for which the Legislature may impose taxes, does not embrace any provision authorizing it to tax property for the benefit of counties;

That said act embraces two subjects-matter, which is violative of paragraph 8, Section 7, Article 3 of the Constitution of said State;

That said Act is a special law; whereas, the Constitution of said State requires that all taxes shall be levied and collected under general laws. Said petition was filed in the Superior Court of Fulton County, Georgia, and was heard in that Court under the petition as amended and a demurrer thereto filed by the Comptroller-General. The demurrer was sustained and said

plaintiff in error carried the case to the Supreme Court of said State, where the judgment of the Superior Court was sustained; whereupon, said Railway Company applied for and obtained a writ of error, which brings the case to this Court for review.

It is believed that the foregoing is a substantial statement of all the material questions made and decided in the State Supreme Court.

The jurisdiction of this Court is sought to be sustained by the plaintiff in error by the contention that the Act in question is violative of that clause of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

If the Act assailed is valid under the Constitution of the State of Georgia, it cannot be said that the plaintiff in error has been denied the equal protection of the laws, and the validity of said Act under the Constitution of the State is a question for the courts of the State to determine. This has been done by the State Supreme Court after a careful and thorough consideration of the questions involved, and its decision on these questions will be followed by this Court, especially as the plaintiff in error is a corporation created by the Legislature of Georgia and its road and other property are exclusively within the territorial limits and jurisdiction of said State, and especially where the the plaintiff in error has no right of exemption under its charter or otherwise, and claims none. This contention is supported fully, it seems to us, in the State Railroad tax case, 92 U. S., 575–618. See also

Gaines vs. Dunn, 14 Peters, 322.
Gilman vs. Sheboygan, 2 Black, 510.
Erie R. R. Co. vs. Pennsylvania, 21 Wallace, 492.
Witherspoon vs. Duncan, 4 Wallace, 210,
Delaware R. R. Tax Case, 18 Wallace, 231.
Hamilton Mfg. Co. vs. Massachusetts, 6 Wallace, 633.
Lane County vs. Oregon, 7 Wallace, 71.
Bailey vs. Maguire, 22 Wallace, 215.

The railroad tax cases (92 U. S., 575–618) cover, it is believed, every material question involved in this case, besides fully supporting our contention that where a State Supreme Court decides a tax law such as that now in question to be valid under the Constitution of the State, and construes such a statute, this Court adopts the decision of such State Court as a rule to be followed in the Federal Courts.

In Louisiana against Pilsbury, 105 U. S., 294, Mr. Justice Field, in delivering the opinion of the Court, says: "Whether such a construction was a sound one is not an open question. * * The exposition given by the highest tribunal of the State must be taken as correct, so far as contracts made under the Act are concerned." To like effect are Leffingwell vs. Warren, 2 Black, 299, 603; Prov. Inst., for Saving, etc., vs. Massachusetts, 6 Wallace, 611–630; Randall vs. Brigham, 7 Wallace, 523. In Morley, Tr., vs. Lake Shore and Michigan So. R. R. Co., 146 U. S., 162-179, Mr. Justice Shiras (delivering the opinion of the Court) cites the foregoing cases with approval, and reaffirms the doctrine contended for. See, also, on the same point, Pullman Car Co. against Pennsylvania, 141 U. S., 18.

We proceed, briefly, to consider the question whether, under the construction given to the Act, it operates unequally, or is wanting in uniformity of operation.

Prior to the passage of this Act, Railroad Companies in Georgia paid no taxes to any of the counties on their property, real or personal. All other tax payers were taxed both by the State and the Counties, respectively. It is obvious, then, that until the passage of the Act under consideration there was a want of uniformity in said State as to the taxation of property for county purposes, which want of uniformity inured to the benefit of the Railroad Companies. The Act makes the system of taxation uniform and complete by taxing the property of Railroad Companies to the extent the Legislature had the power to tax it—(namely, all their property not exempt from taxation, by contract between them and the State) - just like the property of other tax payers was taxed under existing laws. Railroad property,

which had been exempted by charters before the adoption of the State Constitution, cannot be taxed in disregard of such exemption, but all non-exempted property is subject under the Act to the same rate and method of taxation as that of property belonging to other persons.

The fourth section of the Act provides that Railway Companies whose property cannot be taxed for county purposes because of such exemption, but who were liable, under their charters, to be taxed on their net income, should be so taxed. The tax on their net income was, by the express terms of the Act, not to be imposed unless their property was not subject to taxation. The State Supreme Court held that there was no Railroad Company in the State whose property was not subject to taxation for county purposes, but which was taxable on its net income only, and that the fourth section of the Act was therefore inoperative; in a word, that the condition on which said fourth section was to become a part of the scheme of taxation provided by the Act, did not exist, and that the Act was complete without it.

The method of distributing the taxes on unlocated property amongst the counties is for the Legislature alone to determine. If the property is taxed *ad valorem* and at the same rate prescribed for other tax payers, the Railroad Companies have no right to complain. It cannot be disputed that the scheme of the Act is to tax all property *ad valorem*, and that the rate at which Railroad Companies are to be taxed for the benefit of each county is the same rate at which the property of other tax payers is assessed for like purposes.

The clause in the State Constitution which provides for *ad valorem* and uniform taxation (being paragraph 1, Section 2 of Article 7), provides that: "All taxation shall be uniform upon the same class of subjects, and *ad valorem* on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." The two important requirements of this clause are:

(*a*). That taxation shall be uniform upon the same class of subjects.

(*b*). That all property subject to be taxed within the territorial limits of the authority levying the tax shall be taxed *ad valorem*.

The Supreme Court in Verdery against the village of Summerville, 82 Ga., (on page 140) says: "The only classification of property relatively to taxation that is made or authorized is into exempt property or property not subject to be taxed." Under the Act in question, the property of Railroad Companies is not only taxed *ad valorem*, but the rate of taxation is to be the same which the county authority levying the tax prescribes for all other tax payers. It is not alleged or claimed that the method of taxation causes Railroad Companies to pay more than if each county not only prescribed the rate, but made the assessment by applying it to the valuations as made by the Railroad Companies to the Comptroller-General. The scheme of the Act for apportioning the value of the unlocated personal property amongst the several counties is, as a distributive method, not only not violative of the doctrine of uniformity, but has the merit of equality. It is, at all events, as nearly equal and just as is attainable. In Cooley's Constitutional limitations (5th Ed.) top page 636, the distinguished author says: "Absolute equality and strict justice are unattainable in tax proceedings. The Legislature must be left to decide for itself how nearly it is possible to approximate so desirable a result." And this Court, in the decision rendered in the railroad tax cases, 92 U. S., 575, held that "perfect equality and perfect uniformity of taxation as regards individuals or corporations or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect." All the writers on constitutional law and all the Courts of last resort in this country (so far as my

knowledge extends) are in entire accord as to the principles thus formulated. So that if there should be differences of opinion as to whether the scheme of taxation under discussion is free from imperfections, in the matter of equality, this would not be sufficient to condemn it as violative of the Constitution. It is perfectly obvious that the Legislature, in adopting it, was actuated by an honest endeavor to conform to the requirements of the Constitution and to the demands of justice and equity. Nay, more, it is alike obvious that it would be difficult, if not impossible, to devise a scheme more equal or just. The Constitutional provision as to taxation is surely flexible enough to leave to the wise discretion of the Legislature the selection of the method for distributing the unlocated property of Railway Corporations, for purposes of taxation, among the several counties through which their roads run. Some method of distribution is a necessary part of any scheme for county taxation of such property.

The Constitution of Missouri required uniformity of taxation (see first edition Cooley on Taxation, top of page 141,) paragraph headed "Missouri;" see, also, note 3, same page) when it was held in Kansas City, etc., R. R. Co. vs. Severance, 55 Mo., 378, that rolling stock could be distributed for taxation among the different counties through which the railroad runs, on a similar basis provided in the Act of the Georgia Legislature now under consideration. The same doctrine is laid down in Cooley on Taxation, (second edition) page 383. And the author states in support of it (in notes) the case of Missouri River, etc., Co. vs Morris, 7 Kansas, 210; same vs. Blake, 9 Ibid., 489; Smith vs. Leavenworth County, 9 Ibid., 296. (These cases are cited from Cooley on Taxation, and have not been personally examined because the reports in which they appear are not now accessible to us.)

The doctrine of uniformity, as laid down in the Constitution of Georgia, is not a new one, and is not at all peculiar to that instrument. A number of States have Constitutions of the same, or like, import, and, as Judge Cooley says, "When taxes are levied upon property, there must be an apportionment with reference to a uniform standard, or they degenerate into mere arbi-

trary exactions. In this particular, though, the State Constitutions have been very specific in providing for equality and uniformity, they have done little more than to state in concise language the principles of Constitutional law which, *whether declared or not*, (italics ours) would inhere in the power to tax." See Cooley's Constitutional Limitations, (fifth edition) star page 495, top page 613.

We deem it unnecessary to discuss the question made by the plaintiff in error as to whether the Act in question is a general or special statute and whether it is obnoxious to the objection that the State Legislature cannot provide that the Comptroller-General shall make the assessments instead of the county authorities on the valuations as reported by the Railroad Companies in their returns to him. The decision of the State Supreme Court is certainly decisive on these points, under the repeated rulings of this Court.

The question as to the jurisdiction of the County of Fulton over Railroad Companies whose principal offices are in other counties of the State was abandoned, as already stated, in the State Supreme Court.

REPLY TO BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

Since the foregoing brief was prepared, we have seen a copy of the brief of the Counsel for plaintiff in error, and submit the following reply to such parts thereof as are deemed material, and as our limited time will permit.

1. What is meant by "the equal protection of the laws," as claimed in the brief for the plaintiff in error, may be said to be embodied in the following extract, commencing at the bottom of page 11 of said brief, to-wit:

"Equality of protection implies equal exemption with others, in like condition, from charges and burdens of every kind. Discriminating and partial legislation is prohibited; all persons and property must be treated alike under the same circumstances and conditions. Equal protection of the laws is a pledge of the protection of equal laws."

As already stated, the statute under consideration allows the Railroad Companies to put their own valuations on their property, subject to taxation. They cannot, therefore, complain of the assessed value, their valuation being final and not subject to be changed by the Comptroller-General, or by any other authority whatsoever. No other tax payer is more favored in the assessment of his property.

The rate of taxation, as has been shown, is the same prescribed for other tax payers whose property is taxable in the several counties through which the several railroads run. Mr. Justice Matthews (delivering the decision of the Court) in the Kentucky Railroad tax cases, 115 U. S., 321-329, says: "But there is nothing in the Constitution of the State of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection therefore, to the discrimination made as between Railroad Companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect, which the discretion of the Legislature has seen fit to impose."

Again, he says (in last paragraph of the decision): "The right to classify Railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property, and the discretion vested by the Constitution of the State in its Legislature, and necessarily involves the right on its part to devise and carry into effect a distinct scheme, with different tribunals, in the proceedings to value it. If such a scheme is due process of law, the details in which it differs from the mode

of valuing other descriptions and classes of property cannot be considered as a denial of the equal protection of the laws."

Under the Georgia Statute, there is no difference in the mode of valuing railroad property from that of other descriptions and classes of property. Railroad Companies, under the Act, value their own property for taxation; other tax payers as a rule, do likewise as to their property. The plaintiff in error certainly has the equal protection of the laws as to the method of valuation, and so have all other Railroad Companies in said State. But apart from this, we respectfully insist that as stated by Mr. Justice Matthews, "The right to classify railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property," especially where, as in Georgia, the Constitution requires uniformity of taxation "upon the same class of subjects."

The case of Strauder vs. West Virginia, 100 U. S., 303, was a case where the statute was obnoxious, as held by this Court, to the original and special design for which the Fourteenth Amendment of the Constitution of the United States was adopted. It is sufficient to say that it is a case altogether different from the one now under discussion.

The case of Savannah vs. Weed, 84 Georgia, 683, was a case where the Mayor and Council of Savannah passed an ordinance taxing real estate at a higher rate than that prescribed for personal property. The case of Verdery vs. Summerville, 82 Georgia, 138, was a case where the municipal authorities passed an ordinance taxing real estate only. Neither case involved any question touching the taxation of railroad property. The question in the first case was whether the tax law could discriminate as to the rate of taxation between real property and personal property. The question in the second case was whether the law or ordinance could exempt personal property altogether from the taxes imposed on real property. There was an obvious want of uniformity as to the rate in both cases, and the Court so held. There is nothing in either case which at all conflicts with the de-

cision of the same Court in the present case. Here, both the rate and the method of valuation is the same as that prescribed for other tax payers. The only difference is in the method of distributing the transitory personal property as valued by the Railroad Companies themselves among the several counties entitled to share in the distribution for purposes of taxation. Substantially the same method of distribution was involved in the railroad tax cases, 92 U. S., 575, and it was held by this Court in that case that such a method of distribution was permissible—that it was neither unjust nor wanting in uniformity, but naturally grew out of the peculiar nature of the property to be taxed.

The plaintiff in error is a creature of the State of Georgia. Because its charter locates its principal office in the county of Muscogee, the Legislature was not deprived of the power to change the situs of its transitory personal property for taxation, especially as its charter was granted since the adoption of the Code in 1863, which provides that all charters thereafter granted should be subject to be repealed or modified by the Legislature. But independent of this provision of the Code, it is within the province of the Legislative body to fix the situs for taxation of any personal property. The charter of a corporation, although it may designate where the principal office of the corporation is to be, is not a contract that all its personal property shall be taxed in the county where such principal office is located and nowhere else. The Act of 1874, under which railroad property in Georgia has been taxed for State purposes from that time until the present, requires each Railroad Company (through its president) to make its returns of property for taxation to the Comptroller-General of the State. The Act is embodied (so far as it is material now to refer to it) in Sections 826 and 826a of the Code, which read as follows:

"The returns of all * * Railroad * * Companies * * shall be made to the Comptroller-General by the first day of May in each year, and the taxes thereof shall be paid to the State Treasurer by the first day of October in each year. The presidents of all Railroad Companies in this State shall be required to return, on oath, annually, to the Comptroller-Gene-

ral, the value of the property of their respective Companies, without deducting their indebtedness; each class or species of property to be separately named and valued, so far as the same may be practicable, to be taxed as other property of the people of the State, and said returns shall be made under the same regulations provided by law for the returns of officers of other incorporated companies which are required by law to be made to the Comptroller-General."

The Act under review, taxing railroad property for the benefit of counties, conforms to the Act of 1874 in requiring the returns of valuation to be made by the Railroad Companies to the Comptroller-General, and in fixing the same times for making them, and for paying the taxes assessed on such valuations. The returns for State taxation, therefore, are not made to the tax receivers, as are the returns of individual tax payers, nor do the tax collectors of the several counties collect the State taxes on railroad property as they do collect like taxes on the property of individuals. The machinery used in the collection of both State and County taxes on railroad property is the same, and the method prescribed under the Act of 1874 for valuing railroad property and collecting taxes thereon for State purposes has been upheld by the Supreme Court of the State from 1874 to the present time in a number of cases which have come before it. The Act of 1874 also provides that the Railroad Companies sought to be taxed by virtue of its provisions, may, if they desire, resist the collection of the taxes required, by filing an affidavit of illegality, returnable to the Superior Court of Fulton county, just like such companies are allowed to resist the collection of the taxes for the benefit of counties under the Act of 1889. The Supreme Court of the State has held that the remedy given to the Railroad Companies by the Act of 1874 for resisting the collection of the taxes imposed must be strictly pursued, unless there are such complications resulting from the negligence or fault of the Comptroller-General, as would give a Court of Equity jurisdiction. The right of the Legislature to require an affidavit of illegality under that Act to be filed in Fulton Superior Court has never been questioned by any one, so far as we are informed.

If the Act of 1889, now under discussion, is objectionable because it prescribes a different mode for Railroad Companies to make their returns and to pay the tax imposed from the mode required in cases of other tax payers, the fault can be remedied by means of an affidavit of illegality, which each of them is allowed to file. This objection to the Act, if it has any merit at all, is one of the rightful administration of the law, and not a ground of constitutional objection to the validity of the Act.

The same is true of the contention that the property of Railroad Companies is taxable at the rate prescribed by the county authorities, where the principal offices of the companies are located, and at that rate only. If there is any merit whatever in this point, which we do not at all concede, the companies have their remedy in the Courts. See Neal vs. Delaware, 103 U. S., 370; and the Kentucky Railroad tax cases, 115 U. S., *supra*.

See case last cited and the cases therein referred to as additional authorities in support of the contention that this Court will follow the decisions of the highest State tribunal as to the proper construction of State Constitutions, as well as the statutes passed in pursuance thereof.

The Act under review is undoubtedly a general Act as to the subject matter thereof. It operates throughout the State on property necessary to be taxed for county purposes in order to make the scheme of taxation for the benefit of counties uniform on all classes and kinds of property, provision having been made by previous laws for the taxation of the property of all other tax payers at the same rate and *ad valorem*, just like the property of Railroad Companies is taxed under the Act in question.

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